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**L A W S**  
**OF THE**  
**STATE OF MAINE,**  
**VOLUMES 1 AND 2 ;**  
**WITH THE**  
**CONSTITUTION OF THE U. STATES**  
**AND OF SAID STATE,**  
**PREFIXED.**

**ALSO,**  
**NOTES AND REFERENCES,**  
**Delineating the additions and modifications thereof,**  
**WHICH HAVE BEEN ENACTED BY THE LEGISLATURE OF THE STATE,**  
**FROM**  
**1821 to 1834.**

**TO WHICH ARE APPENDED,**  
**IN NOTES AND COMMENTS,**  
**A F U L L S Y N O P S I S**  
**Of the Decisions relating thereto, contained in the 17 volumes of Massachusetts Re-**  
**ports; 10 volumes Pickering's Reports, and 7 volumes of Greenleaf's Reports.**

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**BY FRANCIS O. J. SMITH,**  
**COUNSELLOR AT LAW.**

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**Vol. II.**

**PORTLAND :**  
**THOMAS TODD AND COLMAN, HOLDEN & CO.**  
**1834.**



**HARVARD COLLEGE LIBRARY**

*1866, May 29.*

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## ADVERTISEMENT.

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The present edition of the first two volumes of the Laws of Maine is designed for the use of all classes of citizens, and not for those exclusively who are engaged in the practice of Law. And it is confidently believed, that in all ordinary cases of inquiry into the provisions and meaning of the Statute Laws which it contains, it will be found upon experiment to serve as a useful substitute for the thirty-four volumes of Law Reports, from which its notes have been carefully extracted.

An examination into the plan of the work will exhibit—

1st. Marginal references to the original statutes of Massachusetts from which each chapter of the aforesaid Laws of this State were copied, or compiled:

2dly. Abstracts of all the material decisions and constructions made by both the Supreme Judicial Court of Massachusetts, and the corresponding Court of this State, relating to said Statutes, or to Practice under them, as embraced in *seventeen* volumes of Massachusetts Reports, *ten* volumes of Pickering's Reports, and *seven* volumes of Greenleaf's Reports, and covering a period of more than twenty-seven years of judicial history:

3dly. Notes and references to all additions, and alterations which have been made to them by the Legislature of this State, since 1821 and up to the present time.

This plan has elicited the commendations of several of the most eminent jurists in the State, to whose consideration it was submitted. And although I am sensible that there may be imperfections in the execution of it, I feel conscious of having spared no pains of which my other avocations would permit, to render it accurate, and alike useful to members of the Bar, to Legislators, public officers and every private citizen who may have occasion to consult the Statute laws of this State.

I have been often asked, why I have not embraced in this edition the *third* volume of the Laws. And it may be well, perhaps, that my reasons for omitting to do so be stated here.

1st. The statutes comprised in the third volume have been recently compiled under the direction of the State, upon a plan conforming to that of the present volumes nearly to the full extent that was practicable.

2dly. Those statutes are in their character unlike those comprised in the present volumes, in that they are mostly of recent and adventitious origin, and comparatively of untried operation: and, therefore, of uncertain utility and duration.

3dly. Very few of them have been made the basis of any judicial decision or construction; and such of them as have been so, are not of sufficient general interest and magnitude to warrant the increased expense of a republication, at this time, of the whole volume, for the mere advantage of connecting therewith abstracts of such few adjudications upon them.

4thly. The original paging of the former edition of the first two volumes being referred to in the edition of the third volume mentioned, and also retained in these volumes; and the paging of the third volume being likewise made one class of the references contained



## ADVERTISEMENT.

herein, the connection of the series is made as complete and entire as it could have been made, had the third volume been wholly republished.

The whole of these volumes have been carefully compared with the original manuscript laws in the office of the Secretary of State. And not only the variations of the present edition from the originals have been noted, but the "errors in the originals" are also pointed out in detail, as will be seen by reference to the certificates of the Secretary of State, at the end of the respective volumes. The careful comparison which has thus been instituted renders this copy of the Statutes far more perfect than has ever before been published in the State.

With these explanations, I spread the work before the public, in the hope that it may prove of some service in rendering the laws and jurisprudence of the State more easy of comprehension, and of more practical convenience, than they otherwise might be, to all who are or may be interested therein;—and not doubting that the seal of public approbation upon it will be justly graduated to its actual merits.

FRANCIS O. J. SMITH.

PORTLAND, January, 1834.

## STATE OF MAINE.

## Chapter 112.\*

[\*457]

AN ACT to authorize the Governor in certain cases to offer a Reward, and for other purposes.

**BE** *it enacted by the Senate and House of Representatives, in Legislature assembled,* That the Governor be, and he is hereby authorized, whenever it shall appear to him necessary, to offer and pay a suitable reward, not exceeding one thousand dollars in any one case, to any person or persons, who shall, in consequence of such offer, apprehend, bring back, and secure any person or persons escaping from any of the prisons of this State, convicted of any capital crime, or other high handed offence, and misdemeanor, or charged therewith. And he is also further authorized to offer and pay a like reward for the apprehending any person or persons, having committed any such crime or offence as aforesaid, where it cannot be done in the ordinary and common course of proceeding ; if in his opinion the public good requires it. And the Governor, with advice of Council, is hereby authorized to issue his warrant on the Treasury, for the payment of such reward. [Approved February 28, 1821.]

Governor may offer a reward not exceeding 1000 dolls. for apprehending prisoners escaped, or persons charged with high handed offences.

[Mass. Stat. Mar. 8, 1802.]

And may draw a warrant on Treasury for the same.



CH. 113.

Chapter 113.\*

[\*458]

AN ACT providing for the appointment of Agents for demanding and receiving Fugitives from Justice.

Fugitives from justice.

[Mass. Stat. June 18, 1801.]

WHEREAS it is provided by the Constitution of the United States, that a person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime: And whereas by an act of the Congress of the United States of America, passed on the twelfth day of February in the year of our Lord one thousand seven hundred and ninety-three, it is, among other things, provided, that the executive authority of each State, to which any such person shall have fled, shall deliver him over on demand of the executive authority of the State, where the crime shall have been committed, to the agent of the State, which shall make the demand: .

Governor may appoint an agent to demand of the Executive of any other State, a fugitive from justice;

[Ib. § 1.]

And shall by his warrant send fugitives from other States, who are found in this State and have been demanded, to the line thereof.

[Ib. § 2.]

SECT. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That the Governor of this State be, and hereby is authorized, in any such case, to appoint an agent or agents to demand of the executive authority of any other of the United States, any person who shall be charged with treason, felony, or any other crime in this State, and may, by and with the advice of the Council, issue his warrant on the Treasury to defray the expenses of such agent in making such demand, and in transporting the person, so charged, from any other State to this.

SECT. 2: *Be it further enacted,* That when a demand shall be made on the executive authority of this State, by that of any other, for the delivery over of any person charged with treason, felony, or other crime, in the State, from which the demand shall be made, the Governor shall issue his warrant, under the seal of the State, authorizing the agent or agents who shall make the demand, to transport such person so delivered over, to the line of this State, on the way to the State which shall make the demand, at the expense of such agent or agents, and shall also in such warrant command all civil officers, within the State, to afford such agents all needful assistance in transporting such person, so charged, pursuant to such warrant. [Approved February 24, 1821.]



## Chapter 114.\*

CH. 114.

AN ACT regulating Towns, Town-Meetings and the choice of Town Officers.

[\*459]

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That every male citizen of this State, of twenty-one years of age and upwards, except paupers and persons under guardianship, who has resided within any town or plantation for one year (a) next preceding his voting and during said term has been taxed for his poll, or any estate in any tax voted to be raised by said town or plantation, shall be entitled to vote in such town or plantation in the election of all town or plantation officers, and in all other town or plantation affairs : *Provided*, Whenever the inhabitants of any town are legally assembled to act on any subject relating exclusively to parishes, no person, who is not a member of said parish and liable to be assessed for parochial charges, shall be permitted to vote in such meetings. And the citizens aforesaid, in any town shall, in the month of March or April annually, assemble at such time and place in the same town, as they shall be notified to attend by the Constable or Constables of the town, or such others as the Selectmen shall appoint to notify the same ; and the citizens aforesaid shall then and there, by a major vote, choose a clerk (who shall be under oath truly to record all votes passed, in such and other town meetings during the year and until another Clerk shall be chosen and sworn in his stead, and also faithfully to discharge all the other duties of his said office ;) three, five or seven able and discreet persons of good conversation, inhabiting in the town to be Select-

Qualification of voters.

Proviso as to voting on parochial questions.

Annual meetings to be holden in March or April.

[Mass. Stat. Mar. 23, 1786, § 2.]

[†See onward, § 3.]

Town officers then to be chosen.

(a) 1. "Every person within this State qualified by the Constitution of this State, to vote for Governor, Senators, and Representatives, in the town or plantation where he resides, shall be entitled to vote in the election of all town or plantation officers within such town or plantation. And any person who shall be convicted of voting in two or more towns or plantations for the choice of town or plantation officers, at any annual election thereof, shall be punishable by fine not exceeding one hundred dollars, to be recovered on indictment before any court of competent jurisdiction within this State." See Statute passed Feb. 6, 1883.

2. Williams vs. Whiting & als. 11 Mass. 424.



CH. 114. men (*b*), and Overseers of the poor, where other persons shall not be particularly chosen to that office (which any town may do if they shall think it necessary and convenient) three or more Assessors, two or more judicious persons for Fence Viewers, Treasurer, Surveyors† of Highways, Surveyors of Lumber, Wardens, Tythingmen, *Sealers of Leather*,‡ Measurers of Wood, Clerks of the Market, Constables, and other usual town officers; the election of Moderator of such meetings, Town Clerks, Selectmen and Assessors, shall be by written ballots, and all other of said officers\* by ballot or such other method as the voters agree upon; and during the election of the Moderator for any town meeting, the town Clerk shall preside, and shall have all powers and do all the duties which the Moderator of a town meeting by law has and does perform (*c*). And the town Clerk, or two of the Selectmen, shall forthwith make out a list of the names of all those who shall be then chosen into office, of whom an oath is by law required, and deliver the same to some Constable or Constables of the same town, together with a warrant to him or them directed, who is hereby required, within three days after receiving such warrant, to notify and summon each of the said persons to appear before the town Clerk, within seven (*d*) days from the time of such notice, to take the oath by law prescribed to the office, into which they are severally chosen; and every person (*e*) who shall neglect to appear before the

[†Respecting surveyors of highways. See act passed Mar. 5, 1832, ch. 27.]

[‡Repealed; see ch. 428, § 3, vol. 3, p. 270.]

[\*460] Certain officers by ballot.

[Mass. Stat. June 18, 1811, § 2.]

Town Clerk to give list of officers chosen to Constable.

[Mass. Stat. Mar. 23, 1786, § 2.]

Constable's duty thereupon.

Penalty for officers' not ap-

(*b*) Ch. 260, § 3, vol 3, p. 90, requires the selectmen to be sworn, previous to entering upon the duties of their office.

(*c*) 1. It is incident to the office of town clerk to receive and count the votes given in for a moderator of a town meeting. *Dodds vs. Henry, Jr.* 9 Mass. 262.

2. In the absence of the town or plantation clerk, it is made the duty of the selectmen, or assessors to preside, by ch. 260, vol. 3, p. 89.

(*d*) Town clerks have authority to qualify officers elect, after the expiration of "seven days"—the time specified being directory only. *Colman & al. vs. Anderson*, 10 Mass. 113.

(*e*) Upon the choice of a collector of taxes, the town may lawfully require sureties for the faithful discharge of his office; [see next chapter, § 23] and a refusal to find such sureties is a non acceptance of the trust even after the person chosen has taken the oath of office. *Morrill vs. Sylvester*, 1 Glf. 248. But the penalty annexed to the refusal to accept a town office, does



town Clerk, within the said seven days, and take the oath of office unto which he is chosen and summoned as aforesaid, unless such person is by law exempted from serving in the office ; which oath the town Clerk is hereby authorized to administer, shall forfeit and pay to him or them that will inform or prosecute therefor, the sum of five dollars, except those officers, for whose neglect a different penalty is provided, two thirds for the use of the town, and the other third to the use of the prosecutor : *Provided always*, that any person who shall take the oath of office before a Justice of the Peace, and file a certificate thereof with the town Clerk within the said ten days, shall be exempted from the said fine ; and every Constable shall, at the expiration of the term of ten days from the time of receiving such warrant, make a return into the Clerk's office of the same town, of the warrant to him committed as aforesaid, with his doings thereon, for a neglect of which, he shall forfeit and pay the sum of six dollars, to be to the use of the town ; the Constable to be allowed such reasonable sum for his services upon this and other town business as the inhabitants shall agree upon. And the town Clerk shall make a record of such persons as shall from time to time be sworn into office before him, or of such as shall file certificates of their being sworn, as aforesaid ; and no person shall be obliged to serve in any town office two years successively.

CH. 114.  
 appearing to be sworn.

Mode of being sworn and certificate of oath.

Clerk to make record, &c.

SECT. 2\*. *Be it further enacted*, That when by reason of non-acceptance, death or removal (*f*) of any person chosen to office in any town at the annual meeting for the choice of town officers, or at any other time, or by reason of a person's becoming non compos, there is a vacancy, or want of such officers, the town being orderly assembled in the manner this act directs, may proceed to a new choice of officers to supply and fill such vacancy ; and the person or persons thus chosen and sworn before the town Clerk or a Justice of the

[\*461]

Vacancies in town offices how to be filled.

[Ib. § 4.]

not extend to a collector of taxes. *Ib.* By ch. 337, § 7, vol. 3, p. 183, bonds may be required of town treasurer, and a refusal to give them is to be taken as a refusal to accept the office.

(*f*) *Removal*, here, means a removal from the town. *Barre vs. Greenwich*, 1 Pick. 129.



**CH. 114.** Peace, (in case an oath of office is by law required) shall have the same power and authority to discharge the duties of the office, as though chosen at the annual meeting for the choice of town officers.

Power and duty of Moderator.

[Ib. § 6.]

**SECT. 3.** *Be it further enacted,* That at every town meeting, a moderator shall be first chosen by a majority of votes, who shall be thereby empowered to manage and regulate the business of the meeting ; and when a vote declared by the Moderator, shall immediately after such declaration, be scrupled or questioned by seven or more of the voters present, the Moderator shall make the vote certain by polling the voters, or such other way as the meeting shall desire. And no person shall speak in the meeting before leave first had and obtained from the Moderator, nor when any other person is orderly speaking : and all persons shall be silent at the desire of the Moderator on pain of forfeiting one dollar for the breach of every such order, to the use of the town ; and if any person shall, after notice from the Moderator persist (g) in his disorderly behaviour, then it shall be lawful for the Moderator to direct such disorderly person to withdraw from the meeting ; and such disorderly person upon his refusal or neglect to withdraw, shall forfeit and pay a fine of three dollars, to the use of the same town ; and may also by direction of the Moderator be carried out of the meeting by some Constable of said town, and put into some place of confinement, and there be detained for the space of three hours, unless the town meeting shall sooner adjourn or dissolve : *Provided always,* That town meetings for the choice of Governor, Senators and Representatives, shall be had as the Constitution† directs ; any thing in this act contained to the contrary notwithstanding. And the Moderator of\* any town meeting chosen as aforesaid, is hereby authorized, in case no Justice of the Peace be present, to administer to the Clerk in open town meeting, the oath (h) by law prescribed to the same office.

Proviso as to town meetings for choice of State officers. [†Ante, pp. 24, 28, 82.] [\*482]

Moderator may administer oaths, in certain cases.

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(g) The penalty will not attach, unless the offender persists in such behavior after notice from the Moderator, and does not withdraw from the meeting after being directed so to do. *Com. vs. Hoxey*, 16 Mass. 385.

(h) When a moderator administers the oath of office to a town officer, he



**SECT. 4.** *Be it further enacted,* That if the Moderator or Selectmen presiding at any town meeting, without the consent of the voter, shall read or examine, or permit any other person to read or examine the name or names written on his ballot or ticket, with a view to ascertain the name of the candidate voted for, before the poll is closed, the Moderator, Selectmen or Selectman so offending, shall each of them on conviction, forfeit and pay to the use of such town, the sum of twenty dollars, to be recovered by indictment in any Court proper to try the same.

CH. 114.

Penalty if selectmen or moderator permit votes to be inspected before closing the poll.

[Mass. Stat. June 18, 1811, § 3.]

**SECT. 5.** *Be it further enacted,* That when there shall be occasion of a town meeting, the Constable or Constables, or such other person as shall be appointed for that purpose by warrant(i) from the Selectmen, or the major part of them, shall summon and notify the inhabitants of such town, to assemble at such time and place, in the same town, as the Selectmen shall order ; the manner of summoning the inhabitants to be such as the town shall agree upon ; and when ten or more of the freeholders of a town shall signify in writing their desire to have any matter or thing inserted in a warrant for calling a meeting, the Selectmen are hereby required to insert the same in the next warrant they shall issue for a meeting, or call a meeting for the express purpose of considering thereof ; and no matter or thing shall be acted upon in such a manner as to have any legal operation whatever, unless the subject matter thereof be inserted in the warrant for calling the meeting ; and in case the Selectmen shall unreasonably deny to call a meeting upon any public occasion, any ten or more of the freeholders of such town may apply to a Justice of the Peace within and for the same county, who is hereby authorized and empowered to issue his warrant under his hand and

Mode of calling town meetings.

[Mass. Stat. Mar. 28, 1786, § 5.]

Nothing to be acted upon which is not included in warrant for meeting. Justice of peace may call meetings in case, &c.

should make out a certificate of the oath, and the same should be filed among the papers of the town, as furnishing the regular evidence that the oath had been administered. *Abbot vs. Hermon*, 7 Glf. 120.

(i) 1. See notes to § 8, of ch. 135, in this volume.

2. Seals are not essential to such a warrant. *Colman & al. vs. Anderson*, 10 Mass. 118.

3. For proceedings where a town is destitute of officers to call meetings, see ch. 338, vol. 8, p. 184.



CH. 114. seal directed to the Constable or Constables of the town, if any such there be, otherwise to any of the freeholders applying therefor, directing him or them to notify and warn the inhabitants qualified to vote in town affairs, to assemble at such time and place in the same town, as the said\* Justice shall in his said warrant direct, and for the purpose in the same warrant expressed : And when by reason of death, removal (j) or resignation of Selectmen, a major part of the number originally chosen shall not remain in office within any town ; in every such case, a major part of the survivors, or of such as remain in office, shall have the same power to call a town meeting as a major part of the whole number first chosen.

If majority of selectmen die or vacate their offices, a majority of survivors, &c. may call meetings.

Towns, at legal meetings may raise monies, &c.

[Ib. § 7.]

and make by-laws.

to be approved by Court of Sessions.

SECT. 6. *Be it further enacted*, That the citizens of any town, qualified as aforesaid, at the annual meeting for the choice of town officers, or at any other town meeting, regularly warned, may grant and vote such sum or sums of money as they shall judge necessary for the settlement, maintenance and support of the ministry, schools, the poor, and other necessary charges (k), arising within the same town, to be assessed upon the polls and property within the same, as by law provided ; and they are also hereby empowered to make and agree upon such necessary rules, orders and by-laws, for the directing, managing and ordering the prudential affairs of such town, as they shall judge most conducive to the peace, welfare and good order thereof ; and to annex penalties for the observance of the same not exceeding five dollars for one offence, to enure to such uses as they shall therein direct : *Provided*, They be not repugnant to the general laws of this State : *And provided also*, Such orders and by-

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(j) See note f, to § 2, of this chapter.

(k) 1. The power given to towns to raise money for "necessary charges," extends only to those expenses which are incident to the discharge of corporate duties. *Bussey vs. Gilmore*, 8 Glf. 191.

2. Hence a tax of money for the discharge of a contract entered into by a town with the corporation of a toll bridge, for the free passage of the bridge by the citizens of the town, was held illegal, and transcending its powers.

*Ib.*

3. So was a tax to give additional wages to the militia for defending the town against a hostile invasion. *Stetson vs. Kempton & als.* 13 Mass. 272.



laws shall have the approbation of the Court of Sessions of the same county. CH. 114.

SECT. 7. *Be it further enacted*, That the inhabitants of every town within this State, are hereby declared to be a body politic and corporate ; and as such may commence and prosecute any suit or action in any Court proper to try the same ; and may also defend any suit or action commenced against them ; and for this purpose the said inhabitants qualified and convened in manner aforesaid, may nominate and appoint one or more agents or attornies. The choice of the agent or attorney, certified by the town Clerk, shall be deemed and taken sufficient evidence of such appointment. And when any suit shall be commenced against any town, a copy of the writ or original summons, or such other legal process as may issue against them, shall be left with the Clerk of such\* town, or with one of the Selectmen, thirty days at least before the day (*l*) of the sitting of the Court unto which the same shall be returnable.

Towns made bodies politic and corporate, and may sue and be sued.

[Ib. § 8.]

Choice of an agent, how proved.

Writs against towns to be served 80 days before Court.

[\*464]

SECT. 8. *Be it further enacted*, That the bounds (*m*) of all townships shall be and remain as heretofore granted, settled and established. And to prevent an interference (*n*) of jurisdiction, the lines between towns shall be run and the marks renewed within three years from the last day of March next, and once every five years forever after, by two or more of the Selectmen of each town or such other persons as they shall in writing appoint to run and renew the same ; and their proceedings, after every such renewal of boundaries, shall be recorded in the respective town books ; the Selectmen of the most ancient town to give ten days notice in writing unto the Selectmen of the adjoining town, of the time and place of meeting for such perambulation : and the Selectmen who shall neglect their duty in notifying or attending, either personally or by their substitutes, to perambu-

Boundaries of towns established, and lines to be run every five years &c. by selectmen, &c.

[Ib. § 1.]

Mode of proceeding in such cases.

(*l*) Meaning the first day of the term. *Anon. 5 Mass. 198.*

(*m*) Acts prescribing the limits of counties and towns are public acts of which the court will judicially take notice. *Com. vs. Springfield, 7 Mass. 9.*

(*n*) In case of controversy between towns respecting boundaries, see "An Act for ascertaining and establishing the jurisdictional limits of towns," passed March 9, 1832.



**CH. 115.** late the line at the time and places assigned as aforesaid, shall severally forfeit and pay the sum of ten dollars, two thirds to the use of the town which shall comply with their duty as aforesaid, and the other third part unto any two or more of the Selectmen of the town so complying, who are hereby empowered to inform or sue therefor in the Circuit Court of Common Pleas for the same county, at any time within two years after the forfeiture shall be incurred and not afterwards. [Approved March 19, 1821.]

Additional Act, ch. 260, Vol. 3, p. 89.

## Chapter 115.

### AN ACT regulating Elections.

Assessors to make a list of votes for State officers, &c. before 1st. of August annually.

[Mass. Stat. Mar. 7, 1803, § 1.]

[\*465]

Selectmen to revise it within 10 days.

Assessors of plantations to make like lists.

**SECT. 1.** **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That it shall be the duty of the Assessors of each town within this State, on or before the first day of August annually, to make out and deliver to the Selectmen thereof, a correct and alphabetical list (a) of all such inhabitants of their respective towns as shall appear to them qualified by the Constitution of this State, or of the United\* States, respectively, to vote for Governor, Senators, Representatives in the State, or in Congress ; which list it shall be the duty of the Selectmen of such town at some time within ten days then next following, to revise and correct, as to them shall appear necessary, so that the same shall, in their opinion, be a complete list of such of the inhabitants, within their respective towns as shall be constitutionally qualified to vote in the elections aforesaid : And the Assessors of every plantation are alike required to fur-

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(a) 1. The preparation of an alphabetical list is not necessary to the validity of the election—the statute being in this respect merely directory. *Mussey vs. White & al.* 3 Gif. 290.

2. By ch. 518, § 1, vol. 3, p. 371, such list must be deposited in the office of the town or plantation clerk, and also posted up in the town, in one or more places, on or before the twentieth of August annually.



nish themselves with like lists, on or before the tenth day of August annually ; and it shall be the duty of the Selectmen of such towns, and the Assessors of such plantations, to be provided with, and have a complete list as aforesaid at every meeting for the choice of Governor, Senators and Representatives in the Legislature or in Congress : which list shall so be corrected, previous to the opening of any such meeting, as to contain all the qualified voters for the particular election then to be made ; and it shall be the duty of such Selectmen or Assessors to be in session at some convenient place, immediately preceding such meeting, for so long time as they shall judge necessary to receive evidence of the qualifications of persons, whose names have not been entered on the list aforesaid ; and to give public notice of the time and place of such meeting in the warrant for calling such town or plantation meeting.

CH. 115.

Selectmen of towns and assessors of plantations to have such lists at meetings for State officers. Same list to be corrected before opening of meeting.

Selectmen and assessors to be in session immediately before such meeting to receive proof, &c.

Previous notice of such meeting to be given.

SECT. 2. *Be it further enacted*, That in any town where the number of qualified voters shall exceed two thousand, it shall be the duty of the Selectmen of such town to be in session at some convenient place, on the day immediately preceding such meeting ; and when this shall happen on Sunday, then on the Saturday immediately preceding such meeting and for a time as much longer, previous to said day, as they shall judge necessary, to receive the evidence of the qualifications of persons mentioned in the first section of this act.

In towns containing more than 2000 voters, selectmen to be in session day before meeting, and sooner, if necessary.

[Mass. Stat. Mar. 15, 1905, § 2.]

SECT. 3. *Be it further enacted*, That no such meeting shall be opened at an earlier hour than eleven of the clock of the forenoon of the day of election ; provided that any such meeting in any town where the number of qualified voters shall exceed five hundred, may be opened at an earlier hour at the discretion of the Selectmen of such town.

In towns containing more than 500 voters, meeting may be opened before 11 o'clock—otherwise not.

SECT. 4\*. *Be it further enacted*, That it shall be the duty of the Selectmen of each town, and the Assessors of each plantation in this State, by their warrant, to cause the inhabitants of such towns and plantations, qualified according to the Constitution, to be notified and warned, seven days at least, before the election, to assemble in their respective towns and plantations, on the second Monday of Septem-

[\*466]

Mode of calling town and plantation meetings for State officers, &c.

[See ch. 472, vol. 3, p. 819.]



CH. 115. ber (b) annually, to give in their votes for Governor, Senators and Representatives, as the Constitution requires : such meeting to be warned in the manner there legally established for calling other town and plantation meetings ; and at the meetings called for the purposes aforesaid, such proceedings shall be had as the Constitution requires.

At such meetings selectmen, &c. to preside.

[Mass. Stat. Feb. 24, 1796, § 3.]

Their powers ;

to refuse improper votes.

Selectmen, &c. to require votes for Senators to be brought in on one list.

[Mass. Stat. Mar. 7, 1801, § 2.]

No person to vote until his name has been found in the list.

[Ib. § 4.]

SECT. 5. *Be it further enacted*, That the Selectmen and Assessors, authorized and required to preside (c) in any meeting of a town or plantation, which shall be convened for the election of Governor, Senators and Representatives in the Legislature of this State, shall have all the powers which are legally vested in the Moderator of town meetings for the regulation thereof. And in such meetings, the Selectmen or Assessors presiding, shall have power, and it shall be their duty to prevent and refuse the vote of any person not qualified to be an elector, whose qualifications shall be determined according to the Constitution of this State, or the Constitution of the United States, as the case may be.

SECT. 6. *Be it further enacted*, That whenever a meeting is holden in any town or plantation for the purpose of choosing Governor, Senators and Representatives, the Selectmen or Assessors presiding at such meeting, be, and hereby are directed to call on the voters in such meeting qualified for choosing such officers, requiring each of them to give in their votes on one (d) list for as many different persons as are then to be chosen to the office of Senators.

SECT. 7. *Be it further enacted*, That no person shall be permitted to give in his vote at any meeting of a town or plantation, holden for an election to any of the offices aforesaid, until the Selectmen of such town, or the Assessors of such plantation, presiding at such election, shall have had opportunity to inquire his name, and found the same in the list aforesaid ; and any person wilfully voting contrary to the

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(b) If no choice of Representative be effected on that day, the meeting is to be adjourned to each succeeding Monday, until an election be effected. See act passed Mar. 4, 1833, ch. 81.

(c) In case of their absence or refusal, officers pro tempore may be chosen and sworn, by provisions of act passed Mar. 4, 1833, ch. 81.

(d) See further provisions upon this, in ch. 513, § 3, vol. 3, p. 372.



provision\* of this section, or who shall give any false answer to such Selectmen or Assessors, being duly thereof convicted, shall forfeit and pay a fine not exceeding thirty dollars, for each and every offence, according to the nature and aggravation thereof.

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Penalty for so voting or giving false answer.

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SECT. 8. *Be it further enacted*, That if any person, who is by law authorized to preside at any meeting, or to receive votes at any meeting, which may be holden for the choosing of Governor, Senators and Representatives to the Legislature, or any town officers, shall knowingly receive the vote of any person who is not qualified to vote agreeably to the Constitution and laws of this State, in choosing as aforesaid ; such person so presiding or receiving any vote as aforesaid, shall forfeit and pay one hundred dollars ; to be recovered by information, to be filed and prosecuted by the Attorney General, in the Supreme Judicial Court, or by indictment in said Court.

Penalty for presiding officer's receiving votes contrary to law.

[Mass. Stat. Feb. 28, 1814.]

SECT. 9. *Be it further enacted*, That it shall not be lawful for the Selectmen or Assessors of any town or plantation, presiding at a meeting for either of the elections aforesaid, to receive any vote, unless delivered in writing (e) by the voter in person ; and the Selectmen or Assessors, who shall offend herein, shall severally forfeit and pay a sum not exceeding one hundred dollars.

Penalty for receiving any vote, unless delivered in writing by voter himself.

[Mass. Stat. June 29, 1798, § 3.]

SECT. 10. *Be it further enacted*, That any elector who shall give in more than one vote in any one election, and any person who shall be disorderly in any such meeting, shall forfeit a sum not exceeding fifty dollars, nor less than ten dollars, according to the aggravation of each offence.†

Penalty for double voting, &c.

[Mass. Stat. Feb. 24, 1796, § 4.]

†Sec onward, § 16.

SECT. 11. *Be it further enacted*, That if any Selectmen or Assessors of any town, or the Assessors of any plantation, shall knowingly and corruptly neglect or refuse to comply with, or to perform the several duties respectively required of him or them, as pointed out in and by the first section of this act, he shall, for each and every such offence, forfeit and pay a fine not exceeding fifty dollars, according to the nature and aggravation thereof.

Penalty for Selectmen or Assessors neglecting the duties required by 1st section of this act.

[Mass. Stat. Mar. 7, 1801, § 5.]

SECT. 12. *Be it further enacted*, That the Selectmen of any town, and the Assessors of any plantation in the several

Penalty for selectmen or assessors neglect-

(e) Or printed; see ante, p. 28, note h; also, ch. 518, § 2, vol. 3, p. 372.



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ing to call meetings, &c. and do their duty at such meetings.

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[Mass. Stat. Feb. 24, 1796, § 2.]

Duty of town and plantation Clerks, at such meetings.

[†See ch. 187, vol. 3, p. 6; and ch. 518, § 6, vol. 3, p. 374.]

No military duty on days of election of State officers, or electors, or members of Congress.

[Mass. Stat. June 29, 1798, § 2]

No militia officer to exercise command on such days, except, &c.

Assessors in each town before 20th day of February annually to make a list of voters for town officers,

and to be in

counties of this State, who shall neglect to call meetings of the\* inhabitants and others privileged there to vote for the election of Governor, Senators and Representatives, and to give due warning of the time and place of such meetings, as required by the Constitution of this State; or who shall refuse or neglect to preside in any such meetings, or to receive the votes of the qualified electors present; or who shall neglect to ascertain, declare and certify the number of votes; or who shall wilfully make any false declaration or certificate thereof, to the prejudice of the rights of the electors; shall forfeit a sum not exceeding eighty dollars, nor less than forty dollars; to be recovered from each Selectman or Assessor, who shall offend in the premises, according to the aggravation of each offence. And every town Clerk and the Clerk or Assessors of any plantation, present at any such meeting, who shall neglect† or refuse to make a fair record of the votes; or a fair copy of such record; or to attest the same; or who shall refuse or neglect to make due and seasonable return thereof into the Secretary's office, as required by the Constitution of this State; shall forfeit a sum not exceeding eighty dollars, nor less than forty dollars, for each offence.

SECT. 13. *Be it further enacted*, That no officer or soldier of the militia shall be holden to do any military duty on the day pointed out in the Constitution for the election of Governor, Senators and Representatives of this State; or on any day which is or may be, appointed for the choice of Electors of President and Vice President of the United States, or Representatives to Congress: And it shall not be lawful for any such officer to exercise any military command on either of said days, except in time of war or public danger, and every officer offending herein, shall, for each offence, forfeit and pay a sum not less than ten, nor more than three hundred dollars.

SECT. 14. *Be it further enacted*, That it shall be the duty of the Assessors of each town within this State, on or before the twentieth day of February annually, to make out a correct and alphabetical list of all such inhabitants of their respective towns as may be qualified by law to vote in the choice of town officers; and it shall be the duty of said As-



sessors to be in session (*f*) at some convenient place, to be by them\* notified, as provided in the first section of this act, on the day next preceding the day of the annual election of town officers, in the month of March or April annually ; unless the same happen on the Lord's day, in which case the Assessors shall be in session on the Saturday preceding, or on the morning of the day of election, as aforesaid, as the Assessors think proper ; for so long time as they shall judge necessary, to receive evidence of the qualifications of persons whose names have not been entered on said list.

SECT. 15. *Be it further enacted*, That no person shall be permitted to give in his vote or ballot, at any meeting for the choice of town officers, until the person presiding at such meeting shall have had opportunity to inquire his name, and shall have ascertained that the same is in the list aforesaid, and shall have had time to check the same ; and any person wilfully voting contrary to the provisions of this section, or who shall give any false answer or false name to the Assessors, when receiving evidence of the qualifications as aforesaid, or to the person presiding in such town meeting, shall forfeit and pay a fine not exceeding thirty dollars, for each and every such offence.

SECT. 16. *Be it further enacted*, That if any person, at any meeting for the choice of town officers, shall knowingly give in more (*g*) than one vote or list, for any officer or list of officers then voted for at any such meeting, he shall forfeit and pay a fine not exceeding one hundred dollars.

SECT. 17. *Be it further enacted*, That the Selectmen or Assessors of any town aforesaid, who shall refuse or neglect to do and perform all or any of the duties prescribed to them by the fourteenth section of this act, shall forfeit and pay for each and every such offence, a fine not exceeding two hundred dollars ; and all the fines and forfeitures accruing in con-

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session on the day before the election in March or April annually, unless, &c.

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[Mass. Stat June 16, 1813, § 1.]

No person to vote for town officers till his name has been found on the list, &c.

[Ib. § 4.]

Penalty for violation, false answers, &c.

Penalty for double voting.

[Ib. § 2.]


If town officers neglect their duty as prescribed in the 14th section, Penalty.

[Ib. § 5.]

(*f*) It is sufficient if the Assessors post up notice of the time and place of their intended session, without causing such notice to be inserted in the warrant for calling the town meeting. *Tompson vs. Mussey*, 3 Glf. 305.

(*g*) It is a misdemeanor at common law for a citizen who is a legal voter at a town meeting, to give in more than one vote for a municipal officer at one time of balloting. *Com. vs. Silabee*, 9 Mass. 417.



**CH. 116.**  sequence of a violation of this act, shall be recovered by indictment in any Court proper to try the same ; one half to the use of the State, and the other half to the use of the complainant. This act shall be in force from and after the first day of June next. [Approved March 19, 1821.]  
See act passed Feb. 3, 1832, ch. 2; also, act passed Mar. 4, 1833, ch. 81.  
Additional Act, ch. 187, Vol. 3, p. 6.

[\*470]

**Chapter 116.\***

AN ACT concerning the Assessment and Collection of Taxes.

Assessors to be  
chosen in each  
town annually.

[Mass. Stat.  
Feb. 20, 1786,  
§ 1 and 5.]

**SECT. 1.** **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That annually at the same meeting when other town officers are chosen by the respective towns in this State, there shall be chosen by the qualified voters then present and voting, or the major part of them, three or five meet persons, to be Assessors of all such rates and taxes as the Legislature shall order and appoint such town to pay, towards the charges of the Government within the space of one year from the choice of such Assessors, unless the warrant for the assessment shall not be by them received before the first day of March succeeding, and in case of its being received afterwards, it shall be delivered to their successors in office, who shall be under the same obligations to make the assessment as their predecessors would have been under, if they had seasonably received the same, who shall also be the Assessors of county and town taxes ; and each Assessor so chosen or appointed as hereinafter prescribed, shall within the space of seven days next after being notified thereof, be sworn before a Justice of the Peace, or before the town Clerk, to the faithful discharge of his duty, in the form following :

Oath.

You A B, one of the Assessors for the — of C for the year ensuing, do swear, that you will proceed equally and impartially, according to your best skill and judgment, in assessing and apportioning all such rates and taxes as you may, according to law, be directed to assess and apportion during that time. So help you God.

And the Assessors so chosen and sworn shall assess the polls



and estates within such town their due proportion of any tax, according to the rules in the act for raising the same, and in this act, and make perfect lists thereof under their hands (a), or the hands of the major part of them, and commit the same to the Constable or Constables, Collector or Collectors of their town, if any there be, otherwise to the Sheriff, or his deputy, with a warrant under their hands in the form hereinafter directed, and return a certificate thereof to the Treasurer of this State, for the time being,\* with the name of the officer to whom they shall have committed the same assessment, with a warrant as aforesaid to collect: *and the said Assessors shall also have their assessment recorded in the town book, or leave an exact copy thereof by them signed, with the town Clerk, or file such copy in the Assessors office where any such is kept, before the same shall be committed to an officer to collect, and at the same time shall lodge in the said Clerk's office the invoice or valuation, or a copy thereof (b), from whence the rates or assessments are made, that the inhabitants or others rated may inspect the same (c);* and if any Assessor, after being chosen and notified to take the oath of an Assessor in the way and manner other town officers are notified and summoned, shall neglect to appear, or appearing shall refuse to be sworn, he shall forfeit and pay the sum of fifteen dollars for the use of the town, to be recovered by their Treasurer, before the Circuit Court of Common Pleas for the county in which such town lies, by complaint: *Provided always, That it shall be in the power of the Circuit Court of Common Pleas for the same county, upon reasonable excuse made to them by any Assessor that shall refuse to accept as*

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To assess the polls and estates within their town, &c. of any tax laid, &c. and commit list to constable, with warrant, &c.

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[Parts in italics modified; see ch. 837, § 2, vol. 3, p. 181.]

To leave copy of assessment, and valuation with town Clerk.

Penalty for refusing to be sworn as assessor, and how recovered.

(a) 1. The lists of the assessment must be *signed* by the assessors—the signing of the warrant, usually inserted at the end of the tax bill, is not a sufficient compliance with the statute in this particular. *Foxcroft Treas. vs. Nevers & als.* 4 Glf. 72. See *Colby vs. Russell*, 3 Glf. 227.

2. The assessors by ch. 837, vol. 3, p. 180, are made responsible only for their own personal faithfulness and integrity.

(b) Assessors of parishes must make a list, and valuation of the taxable property, before assessing a tax, or the assessment will be illegal and void. *Thurston vs. Little & al.* 3 Mass. 429.

(c) *Blossom vs. Cannon*, 14 Mass. 177; *Thayer vs. Stearns & al.* 1 Pick. 484.



CH. 116. aforesaid, to remit, if they see cause, the penalty aforesaid. And the Selectmen of every such town, when any one or more of the Assessors so chosen shall refuse as aforesaid, shall forthwith after notice thereof, summon a meeting of the qualified voters of such town to choose an Assessor or Assessors in the room of such Assessor or Assessors so refusing, which voters, so assembled, shall accordingly choose so many Assessors as shall be wanting to complete the number which the town at the time of the first choice voted should be elected. And said complaint in substance shall be as follows :

Vacancy to be filled.

Form of complaint against person refusing to be sworn as assessor.

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To the Justices of the Circuit Court of Common Pleas for the county of ———, to be held at ——— within and for the county aforesaid, on the ——— Tuesday of ——— next, complains A B Treasurer of the ——— of ——— that C D of [addition] on the ——— day of ——— last, was duly and legally chosen by the qualified voters of the said ———, to serve as an Assessor thereof, and that the said C D was notified to take the oath of that office as the law directs ; yet the\* said C D has for the space of seven days after being notified as aforesaid, neglected, and still neglects to take the said oath, whereby he hath forfeited the sum of fifteen dollars for the use of the said ———; wherefore your complainant prays that a warrant of distress may be issued against the said C D for the forfeiture aforesaid, in form and manner as the law directs: Dated at ——— the ——— day of ——— Anno Domini, 182 .

A B, Treasurer.

And the same form, *mutatis mutandis*, may be used in the recovery of any penalty which may be incurred by any person chosen as a town or plantation officer, who shall neglect to take the oath of office as required by law.

Selectmen to be assessors in certain cases.

[Ib § 2.]

SECT. 2. *Be it further enacted*, That if any town shall not choose Assessors as aforesaid, or if so many of them so chosen shall refuse to accept, as that there shall not be such a number of them as any town shall vote to be the Assessors thereof, then the Selectmen of such town shall be, and hereby are declared and appointed the Assessors thereof; and every one of them shall be duly sworn to the discharge of the trust; and each Assessor shall be paid out of the town Treasury one dollar for each whole day he shall be necessarily employed in that service.

Pay of assessors.

Towns neglecting to choose assessors or selectmen, liable to fine; and Court of Sessions to appoint assessors :

SECT. 3. *Be it further enacted*, That if any town shall neglect to make choice of Selectmen or Assessors, the said default being made known unto the Circuit Court of Common Pleas within the same county, such town shall forfeit and pay a sum not exceeding three hundred dollars, nor less than one hundred dollars, as the said Court shall order, for the use



of this State ; and in such case, as also where neither the Selectmen nor Assessors chosen by any town, shall accept the trust, or having accepted the trust shall not perform their duty, the Court of Sessions in the same county shall be, and hereby are empowered to nominate and appoint three or more sufficient freeholders within such county, to be Assessors of the rates or taxes in such town as aforesaid, which Assessors so appointed, after being duly sworn, shall assess the polls and estates within such town, their due proportion to any tax, according to law, together with the aforesaid penalty where the town makes default as aforesaid, and such additional sum as shall answer their own reasonable charges\* for time and expense in the said service, not exceeding one dollar and fifty cents per day for each man so employed ; and having made such assessment, shall issue a warrant under their hands for collecting the same, and transmit a certificate thereof to the Treasurer, with the name of the officer to whom they shall commit the same to be collected ; and such Assessors shall be paid their charges as abovesaid, the same being adjusted and certified by two or more Justices of the Court, by whom they were appointed Assessors, under their hands, out of the public Treasury, by warrant from the Governor, with the advice and consent of Council.

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[Ib. § 3.]

their duty.

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their charges how paid.

SECT. 4. *Be it further enacted*, That the Treasurer of this State shall send such warrants as he shall from time to time be ordered to issue, for the assessing any rate or tax, inclosed to the Sheriff of each respective county, who is required immediately to dispose of and transmit the same unto the Assessors of the several towns and plantations within such county, according to the directions thereof.

State Treasurer to send warrants, for assessing taxes, to Sheriffs.

SECT. 5. *Be it further enacted*, That all Assessors chosen or appointed as aforesaid shall duly observe all such warrants as during the time of their office they shall receive from the Treasurer of this State pursuant to any act or acts made and passed by the Legislature of this State, for the assessing and apportioning any rate or tax upon the inhabitants or estates within the town, whereof they are Assessors, on pain that the Assessors of any town failing of their duty required by such warrant of the Treasurer, shall forfeit and pay the

Assessors chosen or appointed, to obey Treasurer's warrants.

[Mass. Stat. Feb. 20, 1796, § 4.]

Forfeiture for delinquency, and how collected.



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Court of Sessions to appoint others in place of delinquent assessors.

Plantations vested with same powers as towns in assessing and collecting taxes.

[Ib. § 12.]

Assessors subject to same duties and liabilities.

Plantations neglecting, &c. subject to same penalties.

[Ib. § 13.]

SECT. 6. *Be it further enacted*, That all plantations which shall from time to time be ordered by the Legislature to pay any part or proportion of the public taxes, shall be, and they hereby are fully vested with all the powers that towns in this State by law are, so far as relates to the choice of Assessors of taxes ; and any person who shall be chosen to the office of an Assessor of taxes in any of the aforesaid plantations, and shall refuse to accept of the office to which he shall have been elected, or neglect to take the oath by law required to be taken by Assessors of taxes in towns, shall be liable to the same penalties, to be recovered in the same way and manner as by this act is provided in the case of Assessors refusing to accept such office, when chosen by towns.

SECT. 7. *Be it further enacted*, That if any of the plantations aforesaid shall neglect to choose Assessors as aforesaid, or if the Assessors chosen by any such plantation, and accepting such trust, shall be remiss or neglect their duty ; in every such case, such plantation shall be subject to the same penalties, and be proceeded with in the same manner



as by this act is provided, in the case of deficient towns ; and such deficient Assessors shall be, and hereby are made liable to the same penalties, to be recovered by the same process as by this act is provided in the case of deficient Assessors, chosen by towns.

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Deficient assessors.

SECT. 8. *Be it further enacted,* That when any part or proportion of any State or County tax shall be laid on any plantation not organized, the Treasurer of the State, or of such county respectively, shall issue his precept to some Justice of the Peace dwelling near to such plantation, requiring him forthwith to grant his warrant directed to some principal inhabitant of such plantation, requiring him to notify and warn the inhabitants of such plantation qualified to vote\* for Governor, to meet at such time and place within the same, as in such warrant shall be specified, in order to choose needful officers for the purposes hereafter mentioned ; and such principal inhabitant is hereby obliged to observe and obey the warrant that he shall receive from such Justice, on the penalty of forfeiting and paying the whole sum that shall be ordered to be levied on such plantation, to be recovered by action of debt by said respective Treasurers, in any Court of record within this State proper to try the same. And such principal inhabitant shall make return of the Justice's warrant to the Justice who issued it, with his doings therein, and the doings of the plantation in consequence of it, within the time limited in such warrant ; and the Justice shall thereupon certify such doings to the State or county Treasurer respectively : and such of said inhabitants as shall then assemble, shall have power, and they are hereby required to choose a Moderator and Clerk, as also Assessors and Collectors for assessing and collecting such plantation's proportion of such State and county tax, as shall be ordered to be assessed, to be duly paid, when collected by such collectors, to the State or county Treasurers respectively : and such Clerk, Assessors and Collectors shall be under oath, to be administered by the moderator of such meeting, or a Justice of the Peace, for the faithful discharge of their respective trusts, and shall have the same allowance from such plantations as such officers are entitled to by law in towns.

Mode of assessing and collecting State or county tax in plantations not organized.

[Mass. Stat. Feb. 16, 1786, § 10.]

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Assessors, &c. to be chosen.



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Duties of assessors so chosen.  
[Ib. § 11.]

Such assessors to call meeting of inhabitants in March or April.  
[Ib. § 12.]

Moderator to notify plantation officers to take oath.  
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[Ib. § 18.]

Penalty for neglect.

Assessors of towns and plantations to notify inhabitants to bring in lists of polls and estates taxable,

[Mass. Stat. Feb. 20, 1786, § 9.]

SECT. 9. *Be it further enacted*, That the Assessors so chosen and sworn shall thereupon take a list of the rateable polls, and a valuation of the estates of the inhabitants of such plantation.

SECT. 10. *Be it further enacted*, That the Assessors, who shall from time to time be chosen or appointed for such plantation, shall have power and they are required to issue their warrants for calling meetings of the inhabitants thereof in the month of March or April annually, for choosing such officers as aforesaid, who shall be sworn by the Moderator, or some Justice of the Peace as aforesaid.

SECT. 11. *Be it further enacted*, That every Moderator of a plantation meeting, shall be held and obliged to notify the plantation\* officers to appear, either before himself or some Justice of the Peace, within seven days from the time of their being chosen, and take the necessary oaths ; and in case of neglect shall forfeit and pay the sum of ten dollars to the use of the plantation, to be recovered by any inhabitant thereof before any Justice of the Peace within the same county.

SECT. 12. *Be it further enacted*, That the Assessors of each town or plantation, in convenient time before they proceed to make any assessment, shall give seasonable warning to the inhabitants by posting up notifications in some public place in said town or plantation, or notify the respective inhabitants in some other way, to make and bring in to them, the said Assessors, true and perfect lists of their polls, and of all their estates both real and personal (saving such estate as is or may by law, from time to time, be exempted from taxation,) which they were possessed of at such periods as the Legislature may from time to time order and direct. And if any person or persons shall not bring in a list of their estates as aforesaid, to the Assessors, he, she or they so neglecting or refusing, shall not be permitted to make application to the Court of Sessions for any abatement of the assessment so laid on him, her or them, unless such person or persons shall make it appear to the said Court that it was not within the power of him, her or them, to deliver to the Assessors respectively, a list of his, her or their rateable estate,



at the time appointed for that purpose (d). And if the Assessors suspect any falsehood in the lists of polls or estates to them presented as aforesaid, then the said Assessors, or either of them, shall require the person presenting such list, to make solemn oath that the same is true ; which oath the Assessors, or either of them are hereby empowered to administer ; and such list being exhibited on oath, shall be a rule for that person's proportion of the tax.

SECT. 13. *Be it further enacted*, That if any person or persons shall at any time, be aggrieved (e) at the sum or sums set and apportioned upon him or them by the Assessors of any town or plantation, and shall make it appear unto the Assessors for the time being of such town or plantation, that he or they are rated more than his or their proportion, according\* to the rules given in the act or acts of the Legislature for making the said assessment, the said Assessors for the time being shall make a reasonable abatement to the person or persons so aggrieved ; and if they shall refuse so to do, such person or persons complaining in writing unto the next Court of Sessions within that county, and making it appear that he or they are over-rated as abovesaid, he or they shall be relieved by the said Court, and shall be reimbursed out of the Treasury of the town or plantation where such assessment was made, so much as the said Court or Assessors respectively shall see cause to abate him or them, with the charges ; and the said Court of Sessions are empowered, on such complaint being made, to require the Assessors or Clerk to produce the valuation by which the assessment was made, or a copy thereof.

SECT. 14. *Be it further enacted*, That the Assessors for any town or plantation may and are hereby authorized and empowered to apportion on the polls and estates according to law, such additional sum over and above the precise sum

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and may require lists to be sworn to.

Persons aggrieved at rates of assessors, may apply for abatement, and if they refuse, may appeal to the Sessions.

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[lb. § 10.]

Assessors, in certain cases may overrate, not exceeding 5 per cent. of sum committed to them.

(d) If one of the inhabitants of a town absent himself, in order that he may not receive personal notice from the Assessors to bring in a list of his taxable estate, where the known usage was to give notice in that method, he cannot afterwards object to the legality of his tax on that account. *Mussey vs. White & al.* 3 Glf. 290.

(e) This section furnishes the only remedy which one overrated can have to avoid the excess. *Osborn vs. Danvers*, 6 Pick. 100.



CH. 116. to them committed to assess, as any fractional division of such precise sum may render convenient in the apportionment thereof, not exceeding five (*f*) per centum on the sum so committed; and it shall be the duty of such Assessors to certify such town or plantation Treasurer thereof.

Rules for apportionment of taxes.

[Ib. § 8.]

[†Part in italics modified; see ch. 337, § 2, vol. 3, p. 181.]

Assessors may add State and county to their other taxes.

[Ib. § 14.]

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SECT. 15. *Be it further enacted*, That all county, town and plantation rates and taxes shall be assessed and apportioned by the Assessors of the several towns or plantations within this State, upon the polls of, and estates within the same, according to the rules that shall be prescribed in and by this act, and the then last tax act, of the Legislature (*g*); and *† such Assessors shall cause attested copies of such assessments and valuations to be lodged in the Clerk's office of the place where the same are made, or file the same in their own office, if any such they have.*

SECT. 16. *Be it further enacted*, That it shall and may be lawful for the Assessors of any town or plantation to add their proportion of the State and county tax to any of their other taxes, and make out warrants and certificates accordingly (*h*).

SECT. 17\*. *Be it further enacted*, That the warrant to be issued by the Selectmen or Assessors for the collecting and gathering in of the State rates or assessments shall be in substance as follows :

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(*f*) 1. If in the assessment of a tax, the Assessors exceed the sum voted to be raised, and *five per cent.* thereon, though the excess be of a few cents only, the whole is void; and the Assessors are liable in *trespass* to the party whose goods have been distrained for the tax. *Huse vs. Merriam & al.* 2 *Gl.* 375. See also, *Elwell vs. Shaw*, 1 *Gl.* 389; and ch. 337, § 3, vol. 3, p. 182.

2. To include in such addition the commissions for collecting, if exceeding five per cent. is illegal. *Libbey vs. Burnham & als.* 15 *Mass.* 144.

3. Where the Assessors before this statute, assessed for the state and county taxes a greater amount than was required by the warrants therefor, the assessments for that reason were not void. *Colman & al. vs. Anderson*, 10 *Mass.* 105.

(*g*) *Martin vs. Mansfield & al.* 3 *Mass.* 424.

(*h*) The state, county and town taxes are required to be assessed separately, and put into separate lists, or assessments. But it seems that a separate warrant for collecting each of them is not necessary. *Thayer vs. Stearns & al.* 1 *Pick.* 482.



—— ss. To A B, Constable or Collector of the town of A, within the county of S,

Greeting.

CH. 116.

In the name of the State of Maine (i) you are required to levy and collect of the several persons named in the list herewith committed unto you, each one his respective proportion therein set down of the sum total of such list, it being —— this town's proportion of a tax (i) or assessment of —— dollars and —— cents, granted and agreed upon by the Legislature of said State, at their session began and held at P——, on the —— day of ——, for defraying the necessary charges of securing, protecting and defending the same; and you are to transmit and pay in the same unto J C B, Treasurer of this State, or to his successor in that office, and to complete and make up an account of your collections of the whole sum, on or before the —— day of ——; and if any person shall refuse or neglect to pay —— the sum he is assessed in the said list, to distrain the goods or chattels of such person to the value thereof; and the distress so taken, to keep for the space of four days, at the cost and charge of the owner; and if he shall not pay the sum so assessed within the said four days, then you are to sell at public vendue the distress so taken, for the payment thereof, with charges, notice of such sale being posted up in some public place in the same town or plantation forty-eight hours next before the sale and expiration of the four days aforesaid: And the overplus arising by such sale, if any there be, besides the sum assessed, and the necessary charges of taking and keeping the distress, you are immediately to restore to the owner; and for want of goods or chattels, whereon to make distress for the space of twelve days, you are to take the body of such person, so refusing or neglecting, and him to commit unto the common gaol of the county, there to remain until he pay the same, or such part thereof as shall not be abated by the Assessors for the time being, or the Court of Sessions for the said county.\* Given under our hands (j) by virtue of a warrant from the Treasurer aforesaid, this —— day of —— 182 .

Form of warrant of selectmen or assessors for collecting State taxes.

[Ib. § 6.]

[\*479]

A B }  
C D } Assessors.

And the certificate of the assessment of any State tax shall be in substance as follows :

Pursuant to a warrant from the Treasurer of the State of Maine, dated the —— day of —— Anno Domini ——, We have assessed the polls and estates of the —— of —— the sum of —— and have committed lists thereof to the —— of said —— viz. to —— with warrants in due form of law, for collecting and paying in the same to —— Treasurer of said State, or his successor in office, on or before the —— day of —— next ensuing. In witness whereof we have hereunto set our hands at ——, this —— day of —— Anno Domini ——.

A B }  
C D } Assessors.

SECT. 18. *Be it further enacted*, That the warrant to be issued for collecting county, town or plantation rates or assessments, shall also be made out by the Assessors thereof in the same tenor, *mutatis mutandis*.

Similar form for county, town and plantation taxes. [Ib. § 7.]

(i) The words "*In the name of the State of Maine,*" and the sentence "*it being this town's proportion of a tax,*" &c. are matters of form only, the omission of which will not vitiate the warrant. *Mussey vs. White & al.* 3 Glf. 290.

(j) *Bradford vs. Randall*, 5 Pick. 496.



## CH. 116.

Assessors to issue new warrant to collector when original is lost, &c.

[Mass. Stat. Mar. 4, 1800.]

SECT. 19. *Be it further enacted*, That the Assessors for the time being, of any town or plantation empowered to raise money by taxes, whenever it shall be made to appear to them by any Constable or Collector of taxes in the town, or other such place of which they are Assessors, that an original or other warrant, issued and delivered to him for the collection of any certain tax committed to him, hath been lost or destroyed by accident, shall be and hereby are empowered to issue a new warrant to such Constable or Collector for collecting the same, which shall have the same force and effect as the original warrant.

When towns neglect to choose assessors for five months after warrant from Treasurer to assess State tax, what proceedings to be had.

[Mass. Stat. Feb. 26, 1794, § 1.]

[\*480]

SECT. 20. *Be it further enacted*, That if the inhabitants qualified to vote in town affairs, of any town or plantation in this State, from which any State tax or taxes now remain due and unassessed, or from which any State or county tax shall be hereafter required, shall neglect, for the space of five months after having received the warrant of the Treasurer for assessing any State tax, to choose Assessors to assess the same, and cause the assessment thereof to be certified\* as the law requires, to the Treasurer of the State for the time being, and agreeable to his warrant directing the same, he is hereby authorized and directed to issue his warrant under his hand and seal, directed to the Sheriff of the county or his deputy, requiring him to levy and collect, by distress and sale, the sum mentioned therein, of the estates real and personal, of any inhabitant or inhabitants of such deficient town or plantation; which warrant the said Sheriff or his deputy is hereby empowered and required to execute; observing the same rules and regulations as are by law provided for satisfying warrants against deficient collectors of public taxes; and it shall be the duty of the said Sheriff or his deputy, on receiving the said warrant, forthwith to transmit an attested copy thereof to the Selectmen or Clerk of the town or plantation named therein; and if the Assessors shall within sixty days from the receipt of such attested copy, deliver to the said Sheriff or his deputy, a certificate according to law, of the assessment of the tax or taxes required by said warrant, and pay the officer his legal fees, he shall forthwith transmit the same certificate to the said Treasurer, and return the warrant unsatisfied.



**SECT. 21.** *Be it further enacted,* That if the inhabitants qualified to vote in town affairs of any town or plantation in this State, from which any State or county tax shall hereafter be required, shall neglect to choose and keep in office, Assessors to assess the same as the law requires, the Treasurer of the State, or of the county, for the time being, is hereby authorized and directed to issue his warrant, under his hand and seal, directed to the Sheriff of the county or his deputy, requiring him to levy and collect the sum mentioned therein in manner aforesaid : And the said Sheriff or his deputy shall execute said warrant, observing all the rules and regulations and all the provisions mentioned in the twentieth section of this act.

CH. 116.

Inhabitants of towns and plantations neglecting to choose assessors, &c. to assess State or county tax required, state or county treasurer may issue warrant to collect, &c. directed to sheriff. Mode of executing such warrant. [Ib. § 2.]

**SECT. 22.** *Be it further enacted,* That if the inhabitants qualified to vote in town affairs, of any town or plantation in this State, from which any State tax or taxes now remain due and unassessed, or from which any State or county tax shall be hereafter required, shall choose Assessors who shall neglect to assess the tax required by the warrant issued to them,\* or to re-assess any tax on the failure of any collector, and to certify the assessment as the law directs, and the estates of such Assessors shall be found insufficient to pay the same tax in the manner already provided ; then, and in every such case, the Treasurer of the State or of the county, for the time being, is hereby authorized and directed to issue his warrant, under his hand and seal, directed to the Sheriff of the county, or his deputy, requiring him to levy and collect by distress and sale, so much of the sum mentioned therein, as the estates of the Assessors shall be insufficient to pay, of the estates, real or personal, of any inhabitants of the deficient town or plantation ; which warrant the said Sheriff or his deputy shall execute ; observing all the rules and regulations, and all the provisions mentioned in the twentieth section of this act.

When estates of delinquent assessors are insufficient to pay State taxes required of them in certain cases,

[Ib. § 3.]

[\*481]

Treasurer may issue warrant to levy such deficiency, on estate<sup>s</sup> of inhabitants of such towns and plantations deficient.

Rules to be observed.

**SECT. 23.** *Be it further enacted,* That the qualified voters of any town, at the time they choose Constables, may if they see cause, likewise choose some meet person or persons to be collector or collectors of the rates or taxes that shall be assessed upon such town, and agree upon what sum shall

Towns may choose collectors instead of constables, and agree upon their compensation for collecting taxes.



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[Mass. Stat.  
Mar. 16, 1786,  
§ 1.]

If collector re-  
fuse, constable  
to collect tax-  
es.

Constable or  
collector to  
have warrant  
from select-  
men or asses-  
sors.

Case of de-  
cease of con-  
stable, &c. be-  
fore collection,  
assessors to ap-  
point.

Constable or  
collector to  
give bond.

[\*482]

[†See note e,  
ante, p. 550.]

Plantations  
vested with  
same powers  
as towns in re-  
gard to collec-  
tors, &c.

[Mass. Stat.  
Mar. 16, 1786,  
§ 12.]

be (*k*) allowed and paid unto such collector or collectors, for his or their services ; but if such collector or collectors so to be chosen, shall refuse to serve, or if no collector shall be chosen, then the Constable or Constables of such town shall collect and gather such rates and taxes (*l*) ; and every collector of taxes or Constable, shall have a warrant from the Selectmen or Assessors, empowering him to collect such rates or taxes as shall be committed to him to collect, and he shall pay in the same according to the directions in such warrant, and in case any Constable or Collector of taxes de- cease before his perfecting the collection of any assessment committed to him to collect and pay into the State Treasu- ry, the Assessors for the time being of such town or planta- tion shall nominate and appoint, at the charge of such town or plantation, some other fit person or persons to perfect the same collection, and enable and empower such person or per- sons to collect the same, by granting a warrant to him or them for that purpose. And such Assessors are hereby authorized to require of every such Collector or Constable a bond in such sum and with such sureties, to the Treasurer\* of such town, conditioned for the faithful discharge of his duty as collector,† before they proceed to deliver to such Collector or Constable a warrant for collecting rates or assessments, and on his neglecting or refusing to procure such bond, he shall be considered as refusing to accept such office.

SECT. 24. *Be it further enacted*, That all plantations which shall from time to time be ordered by the Legislature to pay any part or proportion of the public taxes, are fully vested with all the powers that towns in this State by law are vested with, so far as relates to the choice of Constables and Collectors of taxes and requiring bonds of the same.

SECT. 25. *Be it further enacted*, That the oath to be

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(*k*) Where the statute gives authority to collect all such taxes as *shall* be granted, it intends all such assessments as should be granted after the passing of the law, and not after the appointment of the collector. *Colburn vs. Ellis & al.* 7 Mass. 92.

(*l*) If a constable, who is also a collector of taxes, be sworn only as con- stable, he is qualified to collect taxes. *Colman & al. vs. Anderson*, 10 Mass. 105.



administered to the Constable in any town shall be in the form following : CH. 116.

Whereas you A B, are chosen Constable within the town of C for one year now following, and until other be chosen and sworn in your place, do swear that you will carefully intend the preservation of the peace, the discovery and preventing all attempts against the same; that you will duly execute all warrants which shall be sent unto you from lawful authority, and faithfully attend all such directions in the laws and orders of Court as are or shall be committed to your care, that you will faithfully, and with what speed you can, collect and levy all such fines, distresses, rates, assessments and sums of money for which you shall have sufficient warrants, according to law; rendering an account thereof, and paying the same according to the direction in your warrant; and with like faithfulness, speed and diligence, you will serve all writs, executions and distresses in private causes, betwixt party and party, and make return thereof duly in the same Court where they are returnable; and in all these things you shall deal faithfully whilst you shall be in office, without any sinister respects of favour or displeasure. *So help you GOD.*

Constable's oath.

[Ib. § 17.]

And the oath to such as may be collectors (m) only, shall be in form following :

You A B being appointed a collector of taxes within the ——— of ———, for one year next following, do swear, that you will levy and collect, with what speed you can, all such rates and\* assessments, for which you shall have sufficient warrants according to law, rendering an account thereof, and paying the same, according to the direction in your warrant. *So help you GOD.*

Collector's oath.

[\*483]

SECT. 26. *Be it further enacted,* That if any person shall refuse to pay the sum or sums which he shall be assessed as his proportion to any rate or tax in the list committed to any Constable or Collector, under the hands of the Assessors of such town or plantation, or the major part of them, upon demand thereof made by such Constable or Collector by virtue of the warrant to him given, it shall and may be lawful to and for such Constable or Collector, and he is hereby authorized and required in such case to distrain the person so refusing by his goods or chattels, and the distress so taken to keep the space of four days at the cost and charge of the owner thereof; and if the owner do not pay the sum or sums of money so assessed on him, within the space of four days, then the said distress shall be openly sold at public auction, by the said officer for the payment of the said money, notice of such sale being posted up in some public place in the same town or plantation, forty-eight hours next

Constable or collector may distrain goods, &c. of persons taxed, who refuse to pay,

[Ib. § 2.]

and sell distress in four days at auction, giving 48 hours' notice.

(m) Towns may elect more than one collector, and divide the taxes among them; and they may commit the State tax to one, and the town tax to another, and appoint also a collector for each school district. *Belgrade vs. Sidney, 15 Mass. 523.*



**CH. 116.** before the sale and expiration of the four days aforesaid (n) ; and the overplus arising by such sale, if any, over and above the charge of taking and keeping the said distress, to be immediately restored to the former owner with an account in writing, of the sale and charges. And if any person assessed as aforesaid, to the State or other tax, shall refuse or neglect to pay the sum or sums so assessed, by the space of twelve days after demand thereof, and shall neglect to show the Constable or Collector sufficient goods or chattels, whereby the same may be levied, in every such case he may take the body of the person so refusing, and him commit unto the common gaol of the county, there to remain until the same be paid, or he therefrom be discharged by due order of law : *Provided nevertheless*, That in all cases where there are, in the opinion of the Assessors, or a major part of them, just grounds to fear that any person or persons, assessed as aforesaid, may abscond before the expiration of the said twelve days, in such cases it shall be in the power of the Constable or Collector to demand immediate payment, and on refusal to commit as aforesaid.

Overplus to be restored to owner.

Collector may arrest body 12 days after demand, &c.

and in certain cases may arrest before expiration of 12 days.

[\*484]

Where taxes are payable by instalments, and any person is about to remove, before whole is payable, collector may still demand and levy the whole.

[Ib. § 8.]

Collectors, &c. superseded, may perfect the collection of taxes committed to them.

**SECT. 27\*.** *Be it further enacted*, That when any State or other rate or tax shall be made payable at two or more several times or days of payment, and any person, being an inhabitant of any town or plantation within this State at the time of making such rate or tax, and being assessed thereunto, shall be about to remove from thence before the time that shall be prefixed for the payment of the same, it shall and may be lawful for the Constable or Collector of the same town or plantation, to demand and levy the whole sum which such person may be assessed in his list or lists, notwithstanding the time for collecting the second part of such rate or tax may not then have arrived, and in default of payment to distrain for the same or to take such other course for the obtaining thereof, as is herein before provided : And when the Constables or Collectors be anew chosen and sworn, in any town, plantation or parish, before the former Constables or Collectors have perfected their collection of any State or other tax or assessment to them committed to collect, such

(n) The collector can sell a distress only by authority of the statute, as he derives none from the common law. *Caldwell vs. Eaton*, 5 Mass. 403.



former Constables or Collectors are hereby fully empowered and required to perfect all such collections, and shall and may exercise the same powers and authority for collecting and enforcing the payment thereof, as by this act they might have done before other Constables or Collectors were chosen and sworn (o). CH. 116.

SECT. 28. *Be it further enacted*, That when any person shall remove from any town or place, where he lived or had his residence at the time of making the list of any State, town, county, plantation or parish tax or assessment, not having before paid the respective sum or sums set upon him by such lists, it shall and may be lawful for the Constable or Collector, to whom any such tax or assessment shall be committed, with a warrant to collect, and he is hereby authorized and empowered to demand the sum or sums assessed upon such person, in what town or place soever, within this State, he may be found ; and upon refusal or neglect to pay the same, to distrain the said person, by his goods and chattels as aforesaid, and for want of such distress, to commit the party to the common gaol of the county where he shall be found, there to remain until payment be made.

When persons remove before paying their taxes, constable, &c. may collect of such persons wherever found.

[Ib. § 5.]

SECT. 29\*. *Be it further enacted*, (p) That where any person duly rated in any town, parish or plantation, hath died or shall die before the payment of the same rates, and where any person duly rated as aforesaid, hath removed or shall remove out of the town or plantation in which such person lived at the time such rates were or may be assessed, before the payment of such rates ; and where any unmarried woman, being duly rated as aforesaid, hath intermarried or shall inter-

[\*485]

Where persons rated, die or remove, or female marry before payment, constables may sue for such rates, &c.

[Mass. Stat. June 15, 1789.]

(o) The same power is extended to Treasurers who are appointed collectors. See ch. 337, § 6, vol. 8, p. 183.

(p) 1. A collector of taxes in an action under the provisions of § 29, cannot recover interest on the amount of taxes demanded in the action. *Danforth vs. Williams*, 9 Mass. 324.

2. Being “*duly rated*” is the basis of authority in such case ; and therefore one who dies before the assessment, does not come within this description. *Cook vs. Leland*, 5 Pick. 237.

3. Where the owner has died seized of lands and the same have not been taken possession of by heirs or devisees, they may be assessed for either State, county, town, plantation, school district, ministerial or other lawful taxes, to the executor or administrator of the deceased, by Act, passed March 9, 1832, ch. 38.



## CH. 116.

[†Parts in italics modified; see ch. 229, vol. 3, p. 61.]

Taxes on unimproved lands of non-residents, or improved lands of proprietors out of State, if not paid, to be advertised.

[†Part in italics changed to three months, by ch. 337, § 8, vol. 3, p. 184.]

[Mass. Stat. Mar. 16, 1786, § 7.]

Mode of publishing, &c.

marry before the payment of such rates ; in all such cases, it shall and may be lawful for the Constables or Collectors of such town, parish or plantation, to sue for such rates, and they shall have the like remedy for the recovery thereof, as other creditors have for recovering their proper debts. *And† Assessors of any town, in assessing any State, county or town taxes, may and hereby are authorized at their election to assess improved lands, houses or tenements to the tenants in possession of the same, or to the owners thereof, if living within the State.*

SECT. 30. *Be it further enacted (q), That where no person appears to discharge the taxes on the unimproved lands of non-resident proprietors, or improved lands of proprietors living out of the limits of this State, to the collector thereof, he shall advertise in the public newspapers of the printer to the State for the time being, three weeks† successively the names of all such proprietors, where they are by him known, with the sum of the taxes assessed on their lands respectively, and also the time and place of sale ; and where they are not known he shall, in the same manner, publish the sum of the taxes on the several rights, numbers of lots, or divisions ; and where the name of the place in which such lands lie may have been altered by any act three years next preceding such advertisement, he shall express not only the present name, but the name by which the same was last known, and in either case shall post the same in some convenient and conspicuous place in the same town or plantation, as the case may be, where the said lands lie, for the term of three weeks previous to the time appointed for such sale ; and also advertise the same in one of the newspapers printed in the county where said lands lie, or in the next adjoining county,*

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(q) 1. Taxes, under the provisions of § 30, [§ 7 of Mass. Stat.] are not a personal charge, but a lien on the lands only. *Rising vs. Granger*, 1 Mass. 48.

2. Where lands of non-resident proprietors which are advertised to be sold for taxes, have within three years next preceding such advertisement been taken from one town and annexed to another ; the name of the former as well as of the latter town must be expressed in the advertisement, within the meaning of § 30. *Porter vs. Whitney*, 1 Glf. 806.



if any such there be, for *three weeks* successively, previous to\* the time of sale ; and if no person shall appear thereupon to discharge the said taxes and all necessary intervening charges, then the collector aforesaid shall proceed to sell at public auction to the highest bidder, (after waiting two hours from the time appointed for said sale,) so much only of the said lands as shall be sufficient to discharge said taxes, and the necessary intervening charges, having first given notice of the intended sale thereof, and the time and place when and where the same will be made as aforesaid ; and shall have power to adjourn from day to day (if necessary) to complete the said sale, not to exceed three days, (waiting as aforesaid,) and shall give and execute a deed or deeds, to the purchaser or purchasers, his or their heirs, and assigns, expressing therein the cause of such sale ; and saving to the aforesaid proprietor or proprietors, the right of redemption of any lands so sold within any time for the space of two years from the time of such sale ; and the same shall be reconveyed to him or them, the said proprietor or proprietors, on paying within two years as aforesaid, the sum such land sold for with interest, at the rate of twenty per cent. per annum on said sum, together with all necessary intervening charges : *Provided nevertheless*, That the purchaser or purchasers as aforesaid, shall not make any strip or waste on the premises, until the time of redemption shall have expired ; and if the said purchaser or purchasers shall make any strip or waste on the premises as aforesaid, he or they shall be liable to pay all damages to the original owner or owners, in as full and ample a manner as if he or they had not purchased the same.

SECT. 31. *Be it further enacted*, That where the owners of improved real estate living within this State, but not in the town in which such real estate lies, shall be taxed to any State, county or town taxes, and shall neglect for the space of six months after the same have been committed to an officer to collect, to pay and discharge the same, it shall and may be lawful for such officer to distrain such person by his goods or chattels, and for want of such goods, to commit him to the common gaol of the county, where he shall be found ; or such officer may, after giving two months notice in writing to such

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[\*486]

if not then paid collector to sell at auction so much as will pay the taxes and charges.

May adjourn sale.

Right of redemption saved, and conditions.

[See ch. 501, vol. 3, p. 349, also act passed Feb. 21, 1833, ch. 56.]

Purchasers not to commit waste.

Where owners of improved real estate, living within the State, but not in the town where estate lies, neglect for 6 months to pay taxes thereon, the officer may distrain or commit delinquents, where found :

or after two



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months' notice,  
officer may sue,  
or sell such real  
estate at auc-  
tion.

[\*187]

If real estate  
cannot be divi-  
ded, as mills,  
&c. he may  
sell undivided  
part, &c.

Owner may re-  
deem.

Purchaser to  
account for  
profits, &c.

Limitation of  
authority to  
make such  
sales to 2 years  
after date of  
assessors' war-  
rant.

Where non-  
residents have  
a duly author-  
ized and notifi-  
ed attorney in  
town, &c.  
where lands  
taxed lie, such  
attorney must  
have notice be-  
fore any such  
sale.

[Mass. Stat.  
Feb. 28, 1795,  
§ 1.]

owner, sue him for such taxes in an action of\* debt ; or such officer may after such notice as aforesaid, proceed to sell such real estate, or so much thereof as may be necessary to pay said taxes and charges of selling the same, conforming in all respects to the provisions contained in the thirtieth section of this act. And if the improved real estate taxed as above mentioned, shall consist of a saw mill, grist mill, mill factory, mill privilege, or other real estate which cannot be divided without prejudice to the whole, and where the whole of the same is not necessary to be sold to satisfy the taxes on the same, the officer, having such taxes to collect, may sell such undivided part of the same as may be sufficient to satisfy such taxes and charges of selling. And the owner of any such improved real estate, so sold, shall have the same right of redemption, and on the same terms, as the owners of unimproved land sold for taxes are by law entitled. And the purchaser, in case of redemption by the owner, shall be obliged to account with such owner for the rents and profits of such real estate so sold, over and above the improvements made on, and the taxes paid for the same ; and shall also be liable to such owner for any strip or waste made on the same : *Provided however,* That no officer to whom any warrants for the collection of taxes may be committed, shall be authorized to sell any improved or unimproved land as mentioned in the thirtieth and thirty-first sections of this act, after the expiration of two years from the date of such warrants.

SECT. 32. *Be it further enacted,* That where any non resident proprietor of any lands in any town or plantation within this State, shall have authorized in writing, any person residing and dwelling in any such town or plantation as his attorney, to pay the taxes imposed upon such lands, and such written authority shall have been lodged with or recorded by the Clerk of such town or plantation, which such Clerk is hereby required to do, upon application of such attorney, and payment of twenty-five cents for filing or recording the same ; no Constable or Collector of taxes in any such town or plantation, shall proceed to advertise the sale of any lands of any such non-resident proprietors, for non payment of any taxes, committed to them to collect, without first notifying and de-



manding payment of such tax of such attorney, either\* personally or by written notice and demand left at his dwelling house, nor till after the expiration of two months from and after such notice. And in case such collector shall have occasion, after said two months, to advertise such lands for sale upon neglect of payment of the taxes, his affidavit made before a Justice of the Peace, and recorded by the Clerk of such town or plantation, (who is hereby required, upon request of such Constable or Collector, to record the same) before any sale be made that such personal or written notice was given, and expressing the time of giving the same, shall be admitted as legal evidence thereof.

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[\*488]

What shall be legal evidence of notice to such attorney.

SECT. 33. *Be it further enacted*, That if any of the Collectors of the State, county, town or parish rates and taxes, when in the execution of their office, shall be hindered or impeded in collecting the rates and taxes committed to them, it shall be lawful for such collectors to require some meet person or persons to aid and assist them therein ; and that all persons so required, who shall refuse their aid and assistance, shall severally pay a fine to the town or plantation where the offence may arise, not exceeding six dollars at the discretion of the Justice before whom the conviction may be had, by complaint or information in writing, according to the circumstances of the offence : *Provided*, That it appears to the Justice, that the aid so demanded as aforesaid, was necessary ; and on default of payment of the fine imposed, the Justice may order the offender to be committed to the common gaol of the county for the space of forty-eight hours.

Collector's, State and other taxes may require aid, if resisted.

[Mass. Stat. Mar. 15, 1786, § 9.]

Fine for refusing to aid.

Proviso.

Imprisonment on default of payment of fine.

SECT. 34. *Be it further enacted*, That when and so often as any Constable or Collector of public taxes, shall have any list of assessment to him committed, in which list shall be named and legally assessed in any sum or sums, any person or persons not inhabitants of the town or plantation to which such Constable or Collector belongs ; in every such case it shall and may be lawful for any such Constable or Collector to require and command any person or persons within the limits of their respective towns or plantations, to assist such Constable or Collector in the collection of the taxes assessed as aforesaid, on any of the inhabitants of any

Constable, &c. having taxes to collect out of his own town, &c. may require aid in towns, &c. and adjacent lands where taxes are to be collected.

[Mass. Stat. Mar. 20, 1783, § 1.]



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[\*489]

Penalty for refusing to aid constable, &c. in such cases.

[lb § 2.]

Collectors to exhibit to selectmen, &c. once in two months, accounts of their collections, &c.

[Mass. Stat. Mar. 23, 1784, § 1.]

Forfeiture for neglect.

[lb. § 2.]

When collector of town, parish, &c. is about to remove, or has removed, before time of payment to treasurers or after, &c. town or parish, &c. meeting may be called to see if they will settle with and discharge such collector.

[Mass. Stat. July 5, 1788, § 1.]

such adjacent lands ; and such Constable or Collector may, and\* hereby is also fully authorized to require and command any of the inhabitants of the aforesaid lands adjacent, to assist him in collecting any such assessment as aforesaid.

SECT. 35. *Be it further enacted*, That if any person or persons, when thereunto required, shall refuse or neglect to aid and assist any Constable or Collector requiring such aid, he or they so refusing or neglecting, shall be, and hereby are made liable to, and shall pay the same penalties, to be recovered and disposed of in the same manner, as is provided in case of refusing to assist Constables or Collectors when thereunto required, within the limits of their respective towns.

SECT. 36. *Be it further enacted*, That the several Collectors of public taxes shall once every two months, at least, exhibit to the Selectmen, and where there are no Selectmen, to the Assessors of the respective towns or plantations to which they belong, a just and true account of all the monies they have received on the several taxes committed to them, and produce the Treasurer's receipts for all the monies by them respectively paid into the Treasury.

SECT. 37. *Be it further enacted*, That if any Collector of public taxes shall neglect to exhibit his accounts in manner aforesaid, he shall forfeit and pay for every neglect, the sum of two and a half per cent. on the sum or sums committed to him to collect, to the use of the town or plantation of which he is or has been a collector, to be recovered by such town or plantation in any court of law proper to try the same.

SECT. 38. *Be it further enacted*, That where any Constable or Collector in any town, plantation or parish within this State, shall have had any rates or assessments committed to him to collect, and has removed, or in the judgment of the Selectmen, Assessors or Treasurer of the said town, or the committee or Treasurer of the parish (as the case may be) is about to remove out of this State, before the time set in his warrant or warrants to make payment to the several Treasurers therein mentioned, or the time of payment be elapsed, and the Treasurer or Treasurers has thereupon issued his or their warrant or warrants of distress ; that in either case it shall and may be lawful for the Selectmen of



such town, Assessors of such plantation, or committee of such\* parish, on their own motion, or at the request of their respective Assessors or Treasurers, to call a town, plantation or parish meeting, in due form of law, setting forth in their warrant the cause of such meeting, and requiring the voters qualified by law at the said meeting, if the said voters shall think it proper, either by themselves or such person or persons as they shall appoint, to settle with the said Constable or Collector, who is under either of the above mentioned circumstances, and who has or is about to remove as aforesaid, for the money he has received on the rate bill or bills that have been delivered to him, and demand and receive his said bill or bills, and give him a discharge therefor ; and at the said meeting may proceed to the choice of another Constable or Collector. And the Assessors shall make out a new warrant under their hands, in due form of law, and shall deliver the warrant together with the same bill or bills, to the person chosen as aforesaid, to collect and levy what shall be remaining due thereon, and the person so chosen is hereby vested with the same authority to levy and collect what shall then remain due on the same bill or bills, as the Constable or the Collector was, to whom they were first committed.

and choose another collector, to whom assessors shall deliver warrant to finish the collection.

SECT. 39. *Be it further enacted*, That if any Constable or Collector so removing or intending to remove himself out of this State, shall refuse to deliver the bill or bills of rates or assessments committed to him to collect, and all monies collected by him thereon and remaining in his hands, when demanded by the Assessors or Selectmen or the major part of them as aforesaid, to deliver the same, he shall pay a fine of two hundred dollars to the use of the town, plantation or parish of which he was Constable or Collector, to be recovered by such town, plantation or parish, in any action of debt to be brought in any Court of law proper to try the same, and shall remain liable to pay what shall remain due upon the bill or bills committed to him to collect, as is provided by this act.

Forfeiture for collector, &c. removing or intending so to do, refusing to deliver bills committed to him and money collected.

[Ib. § 2.]

SECT. 40. *Be it further enacted*, That when any Constable or Collector of any town, plantation or parish, who is already, or may hereafter become *non compos mentis*, and

Constable, &c. becoming *non compos*, or incapable, &c.



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before completing his collection, assessors may appoint substitute to finish :

[\*491]

[Mass. Stat. Feb. 3, 1792, § 1.]

his powers, &c.

Proviso.

When insane or infirm collector has overpaid assessors, such overplus shall be refunded.

Assessors may demand and receive from such insane collectors, or their guardians or executors, &c. the lists of assessments, &c. and deliver them to the new collector.

State treasurer may issue warrant of distress against delinquent constables, &c.

[Mass. Stat. Feb. 16, 1786, § 4.]

who hath, or may have a guardian duly appointed, or who hath already\* been, or may hereafter, by bodily infirmities, be rendered incapable of discharging the duties of his office, in the judgment of the Assessors, before such insane or infirm Constable or Collector hath perfected his collection, the Assessors shall thereupon procure and appoint in writing, under their hands, some suitable person a Collector, to perfect such collection, and grant him a warrant for that purpose ; and the person so appointed shall have the same power and authority as were granted to such insane or infirm Constable or Collector : *Provided nevertheless*, That no person shall be appointed to complete the collection of such infirm Collector unless he shall request the same : *And provided further*, That when it shall appear to the Assessors, that such insane or infirm Constable or Collector shall have paid to the Treasurer or Treasurers, to whom he was accountable, a larger sum or sums of money than the amount of the monies that he has collected from the persons borne on his list of assessment, the Assessors, in their warrant to the collector by them appointed, shall direct him to pay such sum as shall appear to them to be overpaid, as aforesaid, to the guardian of such insane Constable or Collector, or to such infirm Constable or Collector as the case may be. And in the cases aforesaid, and in case of the decease of any Constable or Collector of taxes before his perfecting his collection, the Assessors for the time being shall have power to demand and receive the list or lists of assessments of and from such infirm Constable or Collector, or from the guardian of such Constable or Collector as shall be *non compos mentis*, or from the executors or administrators of any deceased Constable or Collector, or of and from any person in whose hands the same may be, and to deliver the same to the collector newly appointed.

SECT. 41. *Be it further enacted*, That if any Constable or Collector to whom any tax or assessment shall be committed to collect, shall be remiss and negligent of his duty in not levying and paying unto the Treasurer of this State such sum and sums of money as he shall from time to time have received, and as ought by him to have been paid within the respective times set and limited by the Assessors' warrant pursuant



to law, the Treasurer of this State is hereby\* empowered, after the expiration of the time so set, by warrant under his hand and seal directed to the Sheriff or his deputy, to cause such sum and sums of money to be levied by distress and sale of such deficient Constable or Collector's estate real and personal, returning the overplus if any there be ; and for want of such estate, to take the body of such Constable or Collector and to imprison him until he shall pay the same, which warrant the Sheriff or his deputy is hereby empowered and required to execute accordingly.

SECT. 42. *Be it further enacted*, That whenever the time fixed by law for collecting any tax shall have expired, the Treasurer of this State shall and he is hereby authorized and empowered, at the request of the Selectmen or Assessors of any town or plantation, to issue his execution against any collector or collectors of their respective towns or plantation without further order.

SECT. 43. *Be it further enacted*, That if any Constable or Collector, so failing as aforesaid, have no estate to be found, whereon to make distress, and his person cannot be taken within the space of three months from the time a warrant of distress shall issue from the Treasurer of this State as aforesaid, or being taken and committed to gaol, shall not within three months satisfy the same, in such case the town or plantation, whose Constable or Collector so fails of his duty, shall within three months from the expiration of the said three months first mentioned, make good to the Treasury the sum or sums due or owing to the same from such deficient Constable or Collector : and the Assessors of such town or plantation, having notice in writing from the Treasurer of the failure of any Constable or Collector as aforesaid, shall forthwith thereupon, without any other or further warrant, assess the sum the said deficient Constable or Collector is deficient, upon the inhabitants and estates of such town or plantation in manner as the sum so committed to such deficient Constable or Collector was assessed, and commit the same to some other Constable or Collector with warrant to collect ; and in default thereof the Treasurer of this State is directed and empowered to issue a warrant of distress, against such deficient

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[\*492]

Treasurer of State may issue execution when the time fixed for collecting tax has expired.  
[Mass. Stat. Mar. 23, 1784, § 3.]

Towns, &c. to make up deficiency of negligent or delinquent collectors to State Treasurer.

[Mass. Stat. Feb. 16, 1786, § 5.]

Assessors, &c. to assess such deficient sums upon the inhabitants, &c.

and commit to some other constable, &c. to collect.

If not, treasurer to issue warrant of distress



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against such assessors for amount of deficiency.

[\*493]

Proviso—Constable still liable to town, &c. for his default.

Executors and administrators of deceased constable or collector to make up and adjust his accounts with assessors, when unsettled:

and assessors to appoint some person to perfect such collection, with powers, &c.

Liability of executors, &c. failing to settle accounts, &c.

Treasurers of counties, towns, parishes, &c. may issue their warrants against

Assessors for the whole sum which may remain due from such deficient Constable or Collector,\* which shall be executed in the same manner as is prescribed in this act for serving other warrants of distress, which may be issued by such Treasurer: *Provided always*, That such Constable or Collector failing of his duty as aforesaid, for whose default the town, or plantation is answerable, as before expressed, shall, at all times afterwards, be liable to the action or suit of the inhabitants, in their corporate capacity, for all such sum and sums as were assessed upon the same through his defect, and for other damages occurring to them thereby. And in case of the decease of any Constable or Collector in any town, plantation or parish, before his having adjusted the accounts of his assessments to him committed to collect, for such town, plantation or parish, the executors or administrators of such Constable or Collector shall, within two months after his decease, settle and make up accounts with the Assessors of the said town, plantation or parish, of such part of the assessment as was received and collected by the deceased Constable or Collector, in his life time, with which such executors or administrators shall be chargeable in like manner as the deceased Constable or Collector should be, if living; and such Assessors shall thereupon procure and appoint, in writing, some suitable person, a Collector to perfect such collection; and the person so appointed, is accordingly hereby empowered and required to execute all such powers as were granted to the deceased Constable or Collector: and if the executors or administrators of any Constable or Collector so deceased, not having fully collected the assessment committed, shall fail of making up and settling the account of what was received by the deceased as aforesaid, before the expiration of the time aforesaid, such executors or administrators shall be chargeable with the whole sum committed to their testator or intestate, in case there be sufficient assets, in the same manner the deceased Constable or Collector should be, if living.

SECT. 44. *Be it further enacted*, That if the Constable or Collector of any town, plantation or parish within this State, to whom any county, town, plantation or parish rates or assessments shall have been committed to collect, shall be



remiss in his duty, by neglecting to collect and pay in the same to\* the Treasurer of such county, town, plantation or parish, by the time fixed in the warrant to him directed, such Treasurer is hereby empowered to issue his warrant (r) returnable in ninety days under his hand and seal directed to the Sheriff of the county or his deputy (who are hereby respectively directed and empowered to execute the same) to cause such sum or sums of money as such Constable or Collector hath not paid in, to be levied by distress and sale of his estate real or personal, returning the overplus, if any there be ; and for want of such estate to take the body of such Constable or Collector and him imprison until he pay the same ; and the warrant shall be in substance as follows :

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deficient or  
negligent col-  
lectors.  
[\*494]

[Ib. § 6.]

To be levied  
by distress, &c.

(SEAL)                      \_\_\_\_\_ ss. A B, Treasurer of the \_\_\_\_\_ of B, in the said county: To the Sheriff of the county of \_\_\_\_\_, or his deputy,                      Greeting.

Form of such  
warrant.

Whereas C D, of \_\_\_\_\_ aforesaid [addition] on the \_\_\_\_\_ day of \_\_\_\_\_, being a \_\_\_\_\_ of rates and taxes granted and agreed on by the \_\_\_\_\_ aforesaid, had a list of assessments, duly made by the Assessors of the \_\_\_\_\_ aforesaid, amounting to the sum of \_\_\_\_\_, committed to him, with a warrant under their hands, directing and empowering him to collect the several sums in the said assessment mentioned, and pay the same to the Treasurer of \_\_\_\_\_ aforesaid by the \_\_\_\_\_ day of \_\_\_\_\_; but the said C D hath been remiss in his duty by law required, and hath neglected to collect the several sums aforesaid, and pay the same to the Treasurer of the \_\_\_\_\_ aforesaid; and there still remains due thereof the sum of \_\_\_\_\_, and the said C D still neglects to pay the same; you are hereby in the name of the State of Maine required forthwith to levy the aforesaid sum of \_\_\_\_\_ by distress and sale of the estate real or personal of the said C D, and pay the same unto the Treasurer of the said \_\_\_\_\_, returning the overplus, if any there be, to the said C D, and for want of such estate to take the body of the said C D and him commit to the gaol in the county aforesaid, there to remain until he has paid the sum of \_\_\_\_\_, with forty cents for this warrant, together with your fees, or that he be otherwise discharged therefrom by order of law; and make return of this warrant to myself or my successor, as Treasurer of the said \_\_\_\_\_, within ninety days from this time, with\* your doings therein. Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand eight hundred and \_\_\_\_\_.

[\*495]

SECT. 45. *Be it further enacted*, That all executions or warrants of distress, that have been, or may hereafter be issued by the Treasurer of this State or by the Treasurer of

Warrants or  
executions to  
be returned to

(r) 1. A writ of *mandamus* lies to compel a town treasurer to issue his warrant of distress against a collector of taxes neglecting to collect and pay over the same at the time fixed in the Assessors' warrant to the collector. *Waldron & al. vs. Lee*, 5 Pick. 323.

2. If the facts upon which such treasurer is to issue his warrant of distress are properly certified to him, he has no discretion, but is obliged to issue his warrant. *Ib.*



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treasurers by  
whom issued,

[lb. § 7.]

and if unsatis-  
fied may be re-  
newed.

Liabilities of  
sheriff, &c. for  
neglecting to  
execute and re-  
turn such pre-  
cepts.

Treasurers  
may issue exe-  
cution against  
such deficient  
sheriffs, to be  
collected by  
coroners.

any county, town, plantation or parish against any Constable or Collector which hath been or may be hereafter delivered to the Sheriff of any county within this State, or his deputy, such Sheriff or deputy shall make return of his doings thereon unto the Treasurer who issued the same execution or warrant of distress, within a reasonable time after the return day in the same mentioned, with the money, if any, that he hath received and collected by virtue thereof; and where the same shall necessarily be returned unsatisfied, or satisfied in part only, such Treasurer may issue an alias for such sum as may remain due on the return of the first, and so *toties quoties*; which reasonable time after the return day shall be computed at the rate of forty-eight hours for every ten miles distance from the dwelling house of the Sheriff or his deputy, to the place where the warrant may be returnable; and any Sheriff or deputy Sheriff, that shall make default in accounting for, and paying in the monies he may have collected and received of any deficient Constable or Collector, by execution or warrant of distress as aforesaid, or in making return of his doings within reasonable time as aforesaid, shall be liable to pay the whole sum in such execution or warrant of distress mentioned; and the Treasurer of this State, and the Treasurers of the counties, towns, plantations and parishes respectively, are hereby authorized and empowered to make out their warrants respectively, directed to the Coroner of such county, where any Sheriff or his deputy is deficient as aforesaid, requiring them respectively as aforesaid to distrain for the same, upon the estate, real or personal of such deficient Sheriff or his deputy, as is before directed herein, with respect to the Sheriff or his deputy making distress upon the estate of deficient Constables or Collectors; which warrant the Coroner of any county respectively is hereby empowered and required to execute.

[\*496]

Mode of exe-  
cuting treasur-  
ers' warrants.

[Mass. Stat.  
Feb. 3, 1792,  
§ 3.]

SECT. 46\*. *Be it further enacted*, That any officer who may have occasion to distrain any personal property of any deficient Constable or Collector, by force of any warrant of distress or execution issued by the Treasurer of the State, or by the Treasurer of any county, town, plantation or parish, shall proceed in the sale of said personal property, in the



same manner such officer by law is obliged to proceed in serving executions upon judgments obtained by creditors against their debtors, where personal estate is taken for satisfying the same. CH. 116.

SECT. 47. *Be it further enacted,* That when any execution or warrant of distress issued by the Treasurer of the State, or Treasurer of any county, town, plantation or parish to the Sheriff or his deputy, or to the Coroner, shall be levied on the lands, tenements or hereditaments of any deficient Constable, Sheriff or deputy, in every such case the officer executing such warrant of distress, shall make sale thereof at public vendue to the highest bidder, and execute a good deed or deeds of bargain and sale thereof, to the purchaser, having first given notice of the time and place of sale, by posting advertisements, at least fourteen days previous thereto, in two or more public places in the town or place where such lands or tenements lie, as also in the two adjacent towns ; and all deeds and conveyances of any such lands or tenements duly executed as aforesaid, shall be good and effectual in law unto the purchaser, his heirs and assigns forever, to all intents and purposes, as though executed by the deficient Constable, Sheriff or deputy ; and in case the produce of such lands and tenements shall not satisfy the sum or sums, mentioned in the said warrant or warrants of distress, together with reasonable charges arising thereon, then the Treasurer issuing such warrant, shall issue an alias execution or warrant of distress for such remaining sum or sums, and the officer executing the same, for want of estate, shall take the body of such deficient Constable, Collector or deputy Sheriff, and him commit unto the common gaol of the county where he belongs until he shall pay the same : *Provided always,* That when any Constable, Collector or deputy Sheriff shall be committed to gaol for default in payment of any taxes committed to him to collect, such Constable, Collector, or\* deputy Sheriff shall be admitted to the liberty of the gaol yard, they procuring sufficient bonds in the same manner as by law is prescribed for other debtors.

Mode of levying treasurers' executions or warrants on real estate of deficient constables, sheriffs, &c.

[Mass. Stat. Feb. 16, 1786, § 8.]

Constables, sheriffs, &c. committed, may have liberty of yard. [\*497]

SECT. 48. *Be it further enacted,* That whenever a Constable or Collector of any town, plantation or parish, shall be

Assessors to demand of



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constable, &c. taken in execution, a copy of all assessments in his hands unsettled, with evidence, &c. &c.

[Ib. § 14.]

Further proceedings on delivery of such copy, &c. and settlement with assessors.

Towns, &c. may proceed to choose collector to finish collection.

Such collector's powers. &c.

Proceedings in case such constable, &c. refuse to deliver up assessments, evidences, &c.

[\*498]

taken on execution by virtue of this act, it shall be lawful for the Assessors of such town, plantation or parish, for the time being if they see fit, to demand and receive of the Constable or Collector, taken as aforesaid, a true copy of any or all the assessments which as Constable or Collector aforesaid, he had in his hands unsettled, at the time of being taken as aforesaid, with the whole evidence of all payments on the assessments demanded as aforesaid ; and in case the said Constable or Collector, taken as aforesaid, shall upon being demanded thereto, deliver up to the said Assessors, all the assessments, which he as Constable or Collector as aforesaid shall have in his hands unsettled, together with the whole evidence of all payments on the assessments demanded as aforesaid, then the said Constable or Collector shall receive such credit as the said Assessors, from an inspection of his assessments shall adjudge him entitled to ; and the said Collector or Constable taken as aforesaid shall be holden for the payment for such sum or sums of money, as shall be found deficient, after being credited as aforesaid ; and the same town, plantation or parish may proceed to the choice of another Collector at any other time besides the annual meeting in March or April, to finish the collections on the same assessments, who shall be sworn to the faithful discharge of his office ; and the Assessors for the time being respectively, on receiving the assessment as aforesaid shall make and deliver to the same Collector chosen and sworn as aforesaid, a warrant or warrants for finishing the collections last aforesaid in form prescribed, *mutatis mutandis*, and the same Collector shall proceed to finish such collections in the same manner as Constables or other Collectors are to proceed in collecting like species of rates or taxes ; and if any Constable or Collector taken as aforesaid shall on demand as aforesaid, refuse to exhibit and deliver up his assessments, with the evidence as aforesaid, he shall forthwith, either by the officer taking him as aforesaid, or by warrant\* from some Justice of the Peace, be committed to the common gaol of the county there to remain until he shall exhibit the same for the purpose aforesaid : and the Assessors of such town, plantation or parish, are hereby empowered to take the duplicate or copies of the records of



such assessments, if the same are recorded, and the same copies to deliver to the Collector chosen as last aforesaid, who, having received the same and a warrant therefor, shall proceed to finish the collection of the rates and taxes in the same assessments mentioned, of the persons who did not pay the same to the Constable or Collector taken as aforesaid: *Provided always*, That the Collectors chosen to finish the collections aforesaid, on averment of payment by the person or persons assessed to the Constable or Collector taken as aforesaid, and denial of payment to the Collector for finishing the said collections shall not proceed to distrain or imprison any person, unless a vote of such town, plantation or parish, is first had therefor, and certified to the same Collector by the Clerk of such town, plantation or parish.

SECT. 49. *Be it further enacted*, That where any town shall neglect to choose a Constable or Collector, or if any plantation shall neglect to choose a Collector to gather the rates or taxes granted by the Legislature, that in such case, the Sheriff of the county, or his deputy, shall be, and hereby is empowered and directed to collect such rates or taxes, having received an assessment made of the proportion of the several persons rateable in such town or plantation, together with a warrant under the hands of such Assessors as shall be appointed by the Court of Sessions in the county where such deficient town or plantation lies, or under the hands of the Assessors of such town or plantation duly chosen by them respectively.

Where towns, &c. neglect to choose constables or collectors, sheriff, &c. empowered to collect.

[Mass. Stat. Mar. 16, 1786, § 3.]

SECT. 50. *Be it further enacted*, That if any of the plantations aforesaid shall neglect to choose Constables or Collectors as aforesaid, or if the Constables or Collectors chosen by any such plantation and accepting such trust, shall be remiss, or neglect their duty, in every such case, such plantation shall be proceeded with in the same manner as by this act is provided in the case of deficient towns, and such deficient Constables or Collectors shall be, and hereby are made\* liable to the same penalties, to be recovered by the same process as by this act is provided in the case of deficient Constables or Collectors chosen by towns.

Plantations neglecting to choose constables, &c. or choosing remiss collectors, &c. subject to same penalties, &c. as towns.

[Mass. Stat. Mar. 16, 1786, § 13.]

[\*499]

SECT. 51. *Be it further enacted*, That the Sheriff or



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Mode of proceeding to collect taxes by sheriff or deputy.

[Ib § 4.]

his deputy, upon the receiving such assessment and warrant for collecting it, shall forthwith post in some public place of the town or plantation assessed, an attested copy of such assessment and warrant, and shall make no distress for any of the sums so assessed, till after thirty days from his posting it up ; and any person or persons paying the sum or sums respectively assessed on him or them to the Sheriff, before the expiration of the aforesaid thirty days, shall pay at the rate of five per centum over and above the sum assessed to the Sheriff for his fees, and no more ; but all such as shall neglect to pay the sum or sums assessed, beyond the thirty days, after posting up the copy of the assessment as aforesaid, shall be proceeded against by the Sheriff by way of distress or commitment to gaol in the manner Collectors are by this act directed and empowered to distrain or commit to gaol ; and the said Sheriff or his deputy, may require suitable aid for that purpose, and they shall each one pay the fees for the Sheriff's service and travel as in other cases, where distress is made or the person committed.

Officers committing persons for non payment of taxes, must leave copy of warrant and amount of assessment, &c.

[Ib. § 11.]

SECT. 52. *Be it further enacted*, That when any officer appointed for collecting any rates or assessments by virtue of any warrant, shall, for want of goods or chattels whereof to make distress, take the body of any person and commit him to prison he shall give an attested copy of his warrant unto the keeper of the prison, and thereupon certify under his hand the sum such person is to pay as his proportion to the assessment, with the cost of taking and committing : and that for want of goods or chattels, whereon to make distress, he has taken his body ; and such attested copy with the certificate thereon under the hand of the officer, shall be a sufficient warrant to require the prison keeper to receive and keep such person in custody until he shall pay his rate or assessment as aforesaid, and charges of imprisonment with thirty-three cents for the copy of the warrant : *Provided nevertheless*, Any person committed to gaol for his taxes, shall have the liberty of the gaol-yard, upon his procuring sufficient bonds as is by law directed for other debtors.

Liberty of yard allowed to persons so committed.

[\*500]  
When persons committed for

SECT. 53\*. *Be it further enacted*, That when any person standing committed as aforesaid, for any tax due to the



State, or to the county, shall be liberated from such commitment, by virtue of an act entitled “An Act for the relief of poor prisoners confined in gaol for taxes ;” in every such case the town or plantation from whose Assessors, the warrant, by virtue of which such prisoner was committed, was issued, shall be holden to pay the whole tax required of such town or plantation.

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taxes, are discharged as poor debtors, towns, &c. holden to pay tax.

[Mass. Stat. Mar. 10, 1791, § 5.]

SECT. 54. *Provided : And be it further enacted*, That when any person who shall be imprisoned for the non-payment of the proportion of any tax, shall be discharged from confinement by virtue of said act, the Collector or Constable making such imprisonment, shall not be discharged of the proportion which was due from such person, but shall be holden to pay the same, unless such imprisonment shall be made within one year next after the commitment of such tax to such Collector or Constable, or unless the inhabitants of such town or place, in legal town meeting shall see fit to abate the same to such Collector or Constable.

When persons are discharged from tax on poor debtor's oath, constable liable to pay, unless committed within one year, &c.

[Ib. § 6.]

SECT. 55. *Be it further enacted*, That in case of distress or commitment for the non-payment of taxes; the officer concerned therein, shall be entitled to the same fees which Sheriffs by law are, or may be entitled to for levying executions ; saving that the travel in case of distress, shall be computed only from the dwelling house of the officer making such distress, to the place where the distress may be made.

Officer's fees on commitment and distress.

[Mass. Stat. Mar. 16, 1786, § 18.]

SECT. 56. *Be it further enacted*, That it may be lawful for the inhabitants of any town within this State at their meeting in the month of March or April annually, to appoint their Treasurer a Collector of taxes in their said towns ; and the Treasurer so appointed shall be and he hereby is empowered to substitute and appoint under him such number of deputies or assistants, as may be necessary ; which deputies or assistants, so appointed, shall give bonds for the faithful discharge of their duty, in such sums, and with such sureties, as the Selectmen of such town shall think proper ; and the said Collector and his deputies shall have the same powers as are vested in Collectors of taxes chosen for that purpose.

Towns may appoint their treasurer a collector of taxes,

[Mass. Stat. Feb. 15, 1816, § 1.]

and he may appoint deputies, under bonds.

Their powers.

SECT. 57\*. *Be it further enacted*, That all such inhabitants of the said towns, who shall voluntarily pay the said

[\*501] Inhabitants of such towns vol-



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Voluntarily paying taxes within certain periods to treasurer, entitled to such abatement, as towns may agree upon.

[Ib. § 2.]

[†Modified; see ch. 337, § 5, vol. 3, p. 182.]

Taxes not so paid in, how collected.

[Ib. § 3.]

Assessors in towns regulating the collection of taxes by treasurer, &c. how to proceed.

[Ib. § 4.]

[†Part in italics modified; see ch. 337, § 5, vol. 3, p. 183.]

Collector or his deputy within thirty days next after the delivery of their tax bills, the amount of their respective taxes, shall be entitled to an abatement of such sum as said town at their annual meeting may agree upon, on the amount of their said taxes ; and such inhabitants as shall voluntarily pay their taxes to the said Collector or his deputy within sixty days after the delivery of their tax bills, shall be entitled to an abatement of such sum as may be agreed upon as aforesaid, on the amount of their said taxes ;† and all such inhabitants as shall voluntarily pay to the said Collector or his deputy, within one hundred and twenty days after the delivery of their tax bills shall be entitled to an abatement on the amount of their said taxes, of such sum as may be agreed upon as aforesaid.

SECT. 58. *Be it further enacted*, That all such taxes as shall not have been paid in agreeably to the provisions of the fifty-seventh section of this act, shall and may be collected by the Collector or his deputy, or deputies, agreeably to the other provisions of this act.

SECT. 59. *Be it further enacted*, That the Assessors of any town, which shall at their annual meeting, regulate the collection of their taxes, agreeably to the provisions of this act, shall assess their taxes in due form, and deposit the same in the hands of the Treasurer for collection, together with a warrant for that purpose, after he shall have been duly qualified, together with his deputy or deputies ; and at the same time shall post up notifications thereof, *together† with a copy of the fifty-seventh section of this act, in one or more public places within said town (s).*

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(s) Upon a similar statute to that which in this State exonerates Assessors from all liability except for their own personal faithfulness and integrity, (see ch. 337, vol. 3, p. 180,) it has been decided in Massachusetts as follows:

1st. For the assessment of an *illegal tax*, required by a town or parish, &c. the Assessors are not liable. *Ingraham vs. Daggett & al.* 5 Pick. 453. See also, *Withington vs. Eveleth*, 7 Pick. 107.

2dly. For an illegal assessment by Assessors of a tax so required, as where the tax was assessed upon one not a member of the corporation, or parish, &c. the Assessors are liable in an action of trespass, and do not come within the exemption of the statute. *Gage vs. Currier*, 4 Pick. 399; *Inglee vs. Bosworth & al.* 5 Pick. 501; *Little vs. Merrill & al.* 10 Pick. 548. And,



SECT. 60. *Be it further enacted*, That it may be lawful CH. 116.  
 for any town Treasurer who may also have been chosen a  
 Collector as well as Treasurer, as is provided for in the fifty-  
 sixth section of this act, to issue his warrant to the Sheriff of  
 the county, or his deputy, or to any Constable of the same  
 town, directing them to distrain the person or property of any  
 person or persons, who may be delinquent in the payment of  
 taxes after the expiration of the time fixed for the payment  
 thereof by any vote of such town; which warrants shall\* be  
 of the same tenor with the warrant prescribed to be issued  
 by Selectmen or Assessors for the collecting or gathering in  
 of the State rates or assessments, *mutatis mutandis*. And  
 the said officers shall make a return of their warrants with  
 their doings thereon to the said Treasurer and Collector with-  
 in thirty days from the date thereof: *Provided however*,  
 That nothing in this act shall prevent the said Treasurer and  
 Collector whenever there may be a probability of losing a  
 tax, from distraining the person or property of any individual,  
 before the expiration of the time fixed by the votes of said  
 town.

Town treasurer, who is also collector, may issue warrants of distress, &c. against delinquents after expiration of times fixed for payment of taxes.

[\*502]

Form of such warrants and time of return, &c.

[Mass. Stat. Feb. 2, 1818.]

Proviso.

SECT. 61. *Be it further enacted*, That it shall be the  
 duty of said officers to execute all warrants they may receive  
 from said Treasurer and Collector, pursue the same process  
 in distraining the persons or property of delinquents, as Col-  
 lectors of taxes are authorized to do and perform; and for  
 collecting the sum of money due on said warrant, receive the  
 fees that are allowed by law for levying executions in person-  
 al actions: *Provided however*, Before the said officers shall  
 serve any warrant, they shall deliver to the delinquent, or  
 leave at his or her usual place of abode a summons from said  
 Treasurer and Collector, stating the amount due, and that  
 unless the same is paid within ten days from the time of leav-  
 ing said summons, into the town Treasury with twenty† cents  
 for the said summons, his or her property will be distrained  
 according to law.

Officers duty to execute warrants from treasurer, and how.

Provided, notice from treasurer shall be left with delinquent, stating the amount and when to be paid.

[†See ch. 337, § 6, vol. 3, p. 183.]

SECT. 62. *Be it further enacted*, That the affidavit of  
 any disinterested person taken before a Justice of the Peace,

What shall be legal evidence of notice for

3dly. Such an action may be brought against the Assessors jointly, or severally. *Withington vs. Eveleth*, 7 Pick. 106.



CH. 116. of the posting notifications required for the sale of any land which shall be sold by any Sheriff, Constable or Collector in the execution of his office, may be used in evidence of the fact of notice upon any trial of the validity of such sale : *Provided*, That such affidavit, made on one of the original advertisements, or on a copy of one of them, shall be filed and recorded in the Registry of Deeds of the county or district where the land lies, within six months.

sale of lands,  
&c.

[Mass. Stat.  
Feb. 28, 1795,  
§ 2.]

[See ch. 501, §  
2, vol. 3, p.  
349.]

When estates  
of individuals  
are taken for  
delinquency of  
towns, &c. in  
certain cases,  
mode and na-  
ture of indem-  
nity for such  
inhabitants.

[\*503]

[Mass. Stat.  
Feb. 26, 1794,  
§ 4.]

SECT. 63. *Be it further enacted*, That if the estate of any inhabitant or inhabitants (not being an Assessor or Assessors of any town or plantation) shall be levied upon and taken as directed in the twenty-second section of this act, he\* or they shall have an action or actions against the town or plantation, to recover the full value of the estate so levied upon and taken, with interest thereon, computed at the rate of twelve per centum per annum, from the time the said estate was taken, with legal costs of suit ; and at the trial, the plaintiff or plaintiffs shall be admitted to prove the real and true value of the estate so taken, at the time the same was levied upon. And in order that such action or actions may be supported against a plantation :

Plantations  
subject to the  
same liabilities  
as towns in  
such cases.

[lb. § 5.]

SECT. 64. *Be it further enacted*, That each plantation in this State, from which any State tax or taxes now remain due and unassessed, or from which any State or county tax shall hereafter be required as aforesaid, be and hereby is made a body politic and corporate for the purposes aforesaid, and liable to such action or actions, with full power to defend the same in the same manner as towns by law may defend suits against them. [Approved March 21, 1821.]

Additional Act, ch. 227, Vol. 3, p. 61.

See act passed March 2, 1833.



## Chapter 117.

## CH. 117.

AN ACT to provide for the Education of Youth.

WHEREAS the Constitution of this State has declared that a general diffusion of the advantages of education is essential to the preservation of the rights and liberties of the people, and has made it the duty of the Legislature to require the several towns to make suitable provision at their own expense for the support and maintenance of public schools :

Preamble.

[See Constitution, art. 8, p. 38.]

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That every town and plantation shall annually raise and expend for the maintenance and support of schools therein, to be taught by school masters duly qualified, a sum of money including the income of any incorporated school fund not less than forty cents for each inhabitant, the number to be computed according to the next preceding census of the State, by which the representation thereof has been apportioned : *Provided*, That a part not exceeding one third of the money allotted to any district, may, if the district so determine, be applied to the support of a school taught by a mistress,† or when the sum so allotted to a district in any year, shall not exceed thirty-five\* dollars, the whole may be expended in the same manner.

Amount of money to be annually raised and expended for schools, in each town and plantation.

[†See ch. 311, § 6, vol. 3, p. 154; and ch. 361, § 3, vol. 3, p. 212.]  
[\*504]

SECT. 2. *Be it further enacted*, That it shall be the duty of the Presidents, Professors, and Tutors of Colleges, and the preceptors and teachers of academies, and all other instructors of youth, to take diligent care and exert their best endeavours to impress on the minds of children and youth committed to their care and instruction, the principles of piety and justice, and a sacred regard to truth, love to their country, humanity and universal benevolence ; sobriety, industry, and frugality ; chastity, moderation and temperance ; and all other virtues which are the ornaments of human society : and it shall be the duty of such instructors to endeavour to lead those under their care (as their ages and capacities will admit) into a particular understanding of the tendency of the before mentioned virtues, to preserve and perfect a republican constitution, and secure the blessings of liberty as well as to promote their future happiness, and the tendency of the opposite vices to slavery and ruin.

Duty of presidents and instructors of colleges, and preceptors of academies towards their pupils.

[Mass. Stat. June 25, 1789, § 4.]

SECT. 3. *Be it further enacted*, That there shall be cho-



**CH. 117.** sen by ballot at the annual meeting, in each town and plantation, a superintending school committee,† consisting of not less than three nor more than seven persons, whose duty it shall be, to examine school masters, and mistresses, proposing to teach school therein. And it shall be the duty of such committee to‡ visit and inspect the schools in their respective towns and plantations, and inquire into the regulations and discipline thereof, and the proficiency of the scholars therein, and use their influence and best endeavors, that the youth in the several districts regularly attend the schools; and the said committee shall have the power to dismiss (a) any school master or mistress who shall be found incapable, or unfit to teach any school, notwithstanding their having procured the requisite certificates; but the towns and plantations shall be bound to pay such instructors for the time they have been employed; and the superintending committee shall have power to direct what school books shall be used in the respective schools; and at the meeting for the choice of town officers, there shall be chosen an agent|| for each school district, whose duty it shall be, to hire the school masters, or mistresses\* for their respective districts, and to provide the necessary fuel and utensils for the schools.¶ If any parent, master or guardian, shall, after notice given him by the master or mistress of any school, refuse or neglect to furnish their several scholars with suitable books, the Selectmen of the town or Assessors of the plantation thereof, on being notified by such master or mistress, shall furnish the same at the expense of the town or plantation, which expense shall be added to the next town or plantation tax of such parent, master or guardian.

Committee to be chosen at annual meetings.

[†Penalty for neglect by town to choose committee; see ch. 311, vol. 3, p. 153.]

[‡Power of committee enlarged; see ch. 311, vol. 3, p. 153.]

[Committee may fill vacancy; see ch. 375, vol. 3, p. 226.]

Towns to choose agents.

[||Agents may be chosen by districts; see ch. 196, vol. 3, p. 19; and must be sworn; see act Mar. 4, 1883, § 2.]

[\*505]  
[¶Sum limited for these purposes, by ch. 311, § 7, vol. 3, p. 155.]

Books to be furnished by parents, guardians, &c.

In case of neglect, how supplied.

No alien to be employed as a school master.

**SECT. 4.** *Be it further enacted,* That no person shall be employed as a school master, unless he shall be a citizen of the United States, and shall produce a certificate (b) from the

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(a) 1. The committee have no power to dismiss a school master unless for one of the causes mentioned in § 3; and this must be in writing, under their hands, specially assigning the cause of dismissal. *Searsmont vs. Farwell*, 3 Glf. 450.

2. The committee have no authority to hire a school master—that power being vested in the school agent. *Moor vs. Newfield*, 4 Glf. 44.

(b) *Com. vs. Dedham*, 16 Mass. 144.



superintending school committee of the town, or plantation where the school is to be kept, and also from some person of liberal education, literary pursuits and good moral character residing within the county,† that he is well qualified to instruct youth in reading, in writing the English language grammatically, and in arithmetic, and other branches of learning usually taught in public schools; and also a certificate from the Selectmen of the town or Assessors of the plantation where he belongs, that, to the best of their knowledge, he is a person of sober life and conversation, and sustains a good moral character. And no person shall be employed as a school mistress unless she shall produce a certificate from the superintending school committee of the town or plantation where the school is to be kept, that she is suitably qualified to teach the English language grammatically, and the rudiments of arithmetic, and produce satisfactory evidence of her good moral character.

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[†Or in any adjacent county; see ch. 311, § 3, vol. 3, p. 154.]

Certificate of qualifications of master and mistresses to be produced.

[See ch. 311, § 3, vol. 3, p. 154.]

SECT. 5. *Be it further enacted*, That it shall be the duty of the Assessors of each town and plantation to assign to each school district, a proportion of the money raised in each year for the support of schools according to the number of children therein, between the ages of four and twenty-one years†; and the Assessors of towns shall certify such assignment to the Selectmen: *Provided*, That whenever any town or plantation shall raise a sum of money exceeding that required by this act, such surplus may be distributed among the several school districts, in such manner as the town\* or plantation may determine. And if any town or plantation shall fail to raise and expend annually for the support of schools the amount of money required by this act, they shall forfeit and pay a sum not less than twice, nor more than four times the amount of such failure or deficiency. And any person who shall teach any school required by this act, without producing prior to his commencing the same the certificates required by this act, shall forfeit and pay seventy-five cents for each day he shall so teach such school, and shall be barred from recovering of any town, plantation, or person, any pay for teaching such school.

Assessors to assign to each district its share of money.

[†Modified; see ch. 311, § 4, vol. 3, p. 154.]

Proviso.

[\*508]

Penalty for neglecting to raise and expend the money required by this act.

Penalty for teaching school without certificate.



**CH. 117. SECT. 6.** *Be it further enacted,* That all forfeitures and penalties for a breach of this act, shall be recovered by indictment or information, before any Court of competent jurisdiction; and it shall be the duty of all Grand Jurors, to make due presentment thereof, in all cases that shall come to their knowledge, and such penalty when recovered, shall, in all instances be paid into the treasury of the town, or plantation where the same was incurred for the support of schools therein, in addition to the sum annually required to be raised by this act, and the cost of prosecution into the county treasury. And if any town or plantation shall neglect for the space of one year so to appropriate and expend any fine or penalty, they shall forfeit the same, to be recovered in an action of debt to the use of the person who may sue therefor.

Penalties how  
to be recover-  
ed.  
Duty of Grand  
Jurors as to  
this act.

Each town and  
plantation may  
determine the  
number and  
limits of school  
districts; and  
made corpora-  
tions.

[†See ch. 311,  
§ 5, vol. 3, p.  
154; act pass-  
ed Mar. 3,  
1833, § 2.]  
[Mass Stat.  
June 25, 1789,  
§ 2, and June  
13, 1817.]

School dis-  
tricts may  
raise money  
for sundry pur-  
poses.

**SECT. 7.** *Be it further enacted,* That the several towns and plantations, be, and they hereby are authorized and empowered to determine the number†, and define the limits (c) of school districts within the same; and each and every school district in this State is hereby made a body corporate, with power to sue or be sued, and to take and hold any estate, real or personal, for the purpose of supporting a school or schools therein, and to apply the same agreeably to the provisions of this act, independently of the money raised by the town for that purpose.

**SECT. 8.** *Be it further enacted,* That the inhabitants of any school district, qualified to vote in town affairs, be and they hereby are empowered, at any district meeting called

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(c) 1. Towns may alter the limits of, or subdivide any existing school district, without being obliged to change the limits of them all. *Richards vs. Daggett & al.* 4 Mass. 534. But a town has not power to make such alterations so far as to destroy the corporation, without its consent, nor so as to annul or impair contracts made with the corporation. *Waldron & al. vs. Lee*, 5 Pick. 323. See ch. 361, vol. 3, p. 211.

2. *Rumford vs. Wood*, 13 Mass. 195.

3. The above § 7 is not obligatory on the town of Portland; see ch. 196, § 3, vol. 3, p. 20. See also, ch. 361, vol. 3, p. 211.

4. The power given to define the limits of school districts can be executed only by a geographical division of the town. By naming certain persons as composing the district, (the probable intention of the town that the lands occupied by those persons should form the district not being expressed in the town records,) the limitation of the district was held to be invalid. *Withington vs. Eveleth*, 7 Pick. 106.



in manner hereinafter provided, to raise (*d*) money for the purpose\* of erecting, repairing, purchasing or removing a school house and of purchasing land upon which the same may stand, and utensils therefor, and to determine where the said school house shall be erected or located in said district ; and also to determine at what age the youth within such district may be admitted into a school kept by a master or mistress, and whether any scholars shall be admitted into such school from other school districts.

SECT. 9. *Be it further enacted*, That for the purposes aforesaid, all lands, whether improved or unimproved, shall be taxed in the district in which they lie ; and the Assessors of any town or plantation, shall assess in the same manner as town taxes are assessed on the polls and estates of the inhabitants composing any school district, in their town or plantation, and on lands lying within the same, belonging to persons not living therein, all monies voted (*e*) to be raised by the inhabitants of such district, for the purpose aforesaid, within thirty (*f*) days after the Clerk of the district shall have certified to said Assessors the sum voted by the said dis-

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[\*507]

[Mass. Stat.  
Feb. 28, 1800,  
§ 1; June 28,  
1802.]

and direct as  
to admission of  
scholars.

Mode of assess-  
ing and col-  
lecting monies  
raised for sup-  
port of schools.

[Ib. § 2.]

(*d*) A vote to raise money may be rescinded by the inhabitants of the school district, before the same has been assessed. *Pond vs. Negus & als.* 3 Mass. 280. See onward, note *g*, 3.

(*e*) 1. Assessors chosen after monies have been voted, may make the assessments. *Pond vs. Negus & als.* 3 Mass. 280.

2. The district tax may be assessed upon the valuation of property taken in reference to the town taxes for the same year. *Waldron & al. vs. Lee*, 5 Pick. 323.


3. Lands of a resident owner in any town occupied by his tenants are taxable in the school district in which the tenant lives; and lands in his own occupation in the school district in which the owner lives; notwithstanding the discretion vested in Assessors by a general tax act. *Pease vs. Whitney & als.* 5 Mass. 380.

(*f*) 1. If not assessed within "thirty days" after the Clerk's certificate, the assessments will not be invalid. *Pond vs. Negus & als.* 3 Mass. 280.

2. If the assessments be illegally made, the same Assessors, or their successors, may make a second assessment. *Ib.* Or supply omissions—see ch. 337, vol. 3, p. 181.

3. It would seem from the decision in the case of *Little vs. Merrill & al.* 10 Pick. 543, that the act exonerating Assessors from personal liability but for their own personal faithfulness and integrity, (see ch. 337, vol. 3, p. 180) does not extend to Assessors of school districts in any event.



CH. 117.  trict, to be raised as aforesaid. And it shall be the duty of said Assessors to make a warrant in due form of law, directed to one of the Collectors of their town or plantation, requiring and empowering said Collector to levy and collect the tax, so assessed, and pay the same, within a time limited by said warrant, to the Treasurer of the town or plantation, to whom a certificate of the assessment shall be made by the Assessors; and the money so collected and paid shall be at the disposal of the committee of the district, to be by them applied agreeably to the vote of their district as aforesaid. And such Collector in collecting such taxes shall have the same powers and be holden to proceed in the same manner, as is by law provided in collecting town taxes (g).

Powers of town and plantation treasurers as to district taxes.

[Ib. § 3.]

Compensation of assessors, collectors and treasurers.

[\*508]

Mode of calling district meetings.  
[Ib. § 4.]

SECT. 10. *Be it further enacted, That the Treasurer of any town or plantation, who shall receive a certificate of the assessment of a district tax, shall have the same authority to enforce the collection and payment thereof, as of town or plantation taxes. And the Assessors of any town or plantation, shall have the same power to abate such district tax, as they have to abate a town or plantation tax. And the Assessors, Collector and Treasurer, shall be allowed by the school\* district the same compensation for assessing, collecting and paying any district tax as they are allowed by the town or plantation for similar services.*

SECT. 11. *Be it further enacted, That it shall be the duty of the Selectmen of any town, or Assessors of any plantation, upon application made to them in writing, by three or*

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(g) 1. If after a tax has been raised and assessed on the inhabitants of a district, part of the district is set off into another district, the inhabitants of such part remain liable to pay the tax. *Waldron & al. vs. Lee, 5 Pick. 828. See Inglee vs. Bosworth, ib. 498.*

2. If after a tax has been thus voted, but before the same be assessed, the town set off certain of the inhabitants and form them into a separate district, such inhabitants are not liable to be assessed for the money so voted. *Richards vs. Daggett & al. 4 Mass 534. See Whittemore vs. Smith, 17 Mass. 349; also, § 7 of the above chapter, ante, p. 600.*

3. If after a district has voted to raise money to build a school house, and before the same be assessed, the limits of the district be altered, the vote to raise the money is annulled, and the assessment cannot be legally made. *Richards vs. Daggett & al. 4 Mass. 534. See ante, note d.*



more freeholders residing within any school district, in such town or plantation, to issue their warrant, directed to one of the persons making such application, requiring him to warn the inhabitants of such district, qualified to vote in town affairs, to meet at such time and place in the same district as shall in the same warrant be appointed (h). And the warning aforesaid shall be by notifying personally every person in the district qualified to vote in town affairs, or by leaving at his usual place of abode, a notification in writing, expressing therein the time, place and purpose of the meeting, seven days at least before the time appointed for holding the same: *Provided, That any town or plantation, at the request of such district, may, at any legal meeting thereof, determine the manner in which notice of future meetings in such district may be given (i).* And such inhabitants so assembled, may choose a Moderator, and also a Clerk, who shall be sworn faithfully to discharge the duties of his office before a Justice of the Peace, or before the Moderator, and it shall be the duty of such Clerk to make a fair record (j) of all votes passed at any meeting of the district, and to certify the same when required; and may also choose a committee to superintend the laying out and expending the money raised by such district agreeably to their vote, for the purposes aforesaid, to examine and allow such accounts as they may think proper, and to draw orders on the town or plantation treasury for the amount of the money raised.

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[Part of § 11 in italics modified; see ch. 311, § 8, vol. 3, p. 155, and ch. 475, vol. 3, p. 821.]

Proceedings when met.

(h) If a person appointed to warn a school district returns that he warned the inhabitants, but without stating the time or manner of warning, and the inhabitants meet and vote to raise a sum of money, and this vote is duly certified [see § 9] to the Assessors, they are obliged to assess the tax, and neither they nor the town treasurer can inquire into the irregularity of the proceedings antecedent to the meeting. *Saxton vs. Nimms & al.* 14 Mass. 315; *Waldron & al. vs. Lee*, 5 Pick. 323.

(i) 1. Where a town has directed the mode of calling the meetings of school districts, it is necessary in proving their transactions, to show that such directions have been pursued; to show that a meeting was held *de facto* by all the inhabitants who were qualified to attend, is not sufficient. *Moor vs. Newfield*, 4 Glf. 44.

2. *Little vs. Merrill & al.* 10 Pick. 543.

(j) Parol evidence is inadmissible to prove the transactions of a school district meeting—the only legal evidence being the record, or an attested copy of the record. *Moor vs. Newfield*, 4 Glf. 44.



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SECT. 12. *Be it further enacted,* That whenever at any

When a district refuses to raise money, the town or plantation may raise and assess it on the district, and collect it.

[Mass. Stat. Feb. 28, 1815.]  
[\*509]

legal meeting of a school district, called for the purpose of raising money, for the erecting, repairing, purchasing or removing of a school house, or for purchasing land on which the same may stand, or for procuring utensils therefor, a majority of the voters present are opposed to the raising of money for any such purpose, it shall be lawful for the Selectmen of the town, or Assessors of the plantation in which such district\* is situated, on application in writing of any five or more freeholders, inhabitants of such school district, to insert in their warrant for calling the next town or plantation meeting an article requiring the opinion of the town or plantation, relative to such subject as proposed in the said district meeting ; and if a majority of the voters present in such town or plantation meeting, shall think it necessary and expedient, they may grant a sum sufficient for any of the purposes aforesaid, to be assessed on the polls and estates in said school district, to be collected and paid as is in this act provided.

If district cannot agree where school house is to be placed, selectmen, &c. may decide.

[Mass. Stat. Feb. 28, 1800, § 5.]

SECT. 14. *Be it further enacted,* That when the inhabitants of any school district cannot agree where to erect or locate a school house in their district, the Selectmen of the town or Assessors of the plantation to which such district belongs, upon application made to them in writing by the committee of the district, chosen to superintend the building or purchasing of such school house, are hereby authorized and empowered to determine on the place where such school house shall be erected or located. [Approved March 15, 1821.]

Additional Act, ch. 196, Vol. 3, p. 19.



## Chapter 118.

## Ch. 118.

AN ACT directing the method of laying out, and making provision for the Repair and Amendment of Highways (a).

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That when a new highway from town to town, or place to place (b), shall be wanting, or where an highway already laid out, stated and established, may or can with greater convenience be turned or altered, upon application made to the Court of Sessions within the same county, and it being determined by them to be of common convenience or necessity (c), to have such new way laid out, or old way altered, due notice of such applica-

Court of Sessions to lay out highways, adjudged necessary, after due notice given,

[Mass. Stat. Feb. 27, 1797, § 4.]

(a) 1. The regularity of the proceedings in the location of a town way, may be contested in an action of trespass *quare clausum fregit* against the surveyor who proceeds to open and make it; no *certiorari* lying to quash such proceedings. *Harlow vs. Pike*, 3 Glf. 438.

2. Rivers and streams above the flow of the tide, if they have been long used for the passage of boats, rafts, &c. are public highways, and like other highways are to be kept open and free from obstructions. *Berry vs. Carle*, 8 Glf. 269. *Com. vs. Charlestown*, 1 Pick. 180.

3. By the location of a way over the land of any person, the public acquire an easement, which the owner of the land cannot lawfully extinguish or unreasonably interrupt. But the soil and freehold remain in the owner, although incumbered with a way. And every use to which the land may be applied, and all the profits which may be derived from it, consistently with the continuance of the easement, the owner can lawfully claim. He may maintain ejectment for the land thus incumbered; and if the way be discontinued, he shall hold the land free from the incumbrance. *Perley vs. Chandler*, 6 Mass. 456; *Alden vs. Murdock*, 13 Mass. 259; *Stackpole & al. vs. Healey*, 16 Mass. 33; *Robbins vs. Borman & al.* 1 Pick. 122. And where a highway has been discontinued it cannot be re-established, but by being laid out anew. *Com. vs. Western*, 1 Pick. 136.

4. The public cannot justify turning their cattle upon the highway for the purpose of grazing. *Stackpole & al. vs. Healy*, 16 Mass. 33. See *Robbins vs. Borman & al.* 1 Pick. 122.

5. The proceedings in laying out highways are altered by ch. 500, vol. 8, p. 345; and by acts passed March 9, 1832, and March 4, 1833.

(b) The phrase, *from place to place*, means from one place in a town to another place in the same town. *Com. vs. Cambridge*, 7 Mass. 158.

(c) The court must adjudge a way petitioned for to be of common convenience and necessity, previously to laying it out. *Com vs. Cummings & al.* 2 Mass. 171; *Com. vs. Egremont*, 6 Mass. 491.



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by committee  
of 3 or 5 free-  
holders; who  
are to give no-  
tice, &c.  
[\*510]  
and to be under  
oath

to make return  
to the next  
Court.

[See addition-  
al act; also ch.  
590, vol. 3, p.  
345.]

[†Modified;  
see ch. 227,  
vol. 3, p. 60;  
and ch. 249,  
vol. 3, p. 79.]

Persons ag-  
grieved, &c.  
may apply to  
next Court for  
a new commit-  
tee, or Jury.

tion having before such adjudication been given to the towns interested, the said Court are hereby authorized and empowered by warrant under the seal thereof, to appoint a committee of three or five disinterested freeholders in the same county, to\* lay out such highway; which committee shall give seasonable notice (d) to all persons interested, of the time and place of their meeting; and they shall be under oath to perform the said service, according to their best skill and judgment, with most convenience to the public, and least prejudice or damage to private property. And they shall ascertain the place and course of said highway in the best way and manner they can: which having done, they or the major part of them, shall make return thereof under their hands, to the next (e) Court of Sessions to be held in the same county, after the said service is performed, that the same may be accepted, allowed and recorded, and afterwards known for a public highway: *Provided always*, That if any person be damaged in his property by the laying out or altering such highway, the town† where the same is, shall make such person or persons reasonable satisfaction, according to the estimation of the committee, or the major part of them, who laid out the same: and said committee, are empowered and required, under oath, to estimate the same and make return thereof as aforesaid. And if any person shall be aggrieved by the doings of the said committee in estimating damages, he may apply to the Court of Sessions, provided such application be made to the said Court that shall be held in the same county next (f) after the acceptance of such return, and said Court is hereby empowered to hear

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(d) 1. The committee must return specifically, what notice was given to persons interested—and the court is to judge of its sufficiency. *Lancaster vs. Pope & al.* 1 Mass. 86. And they must be sworn. See *Com. vs. Westborough*, 3 Mass. 408.

2. All the members of the committee must act in laying out a highway. *Com. vs. Ipswich*, 2 Pick. 70.

(e) *Com. vs. Barrington*, 6 Mass. 492.

(f) It must not be at an adjournment of the next term. *Com. vs. Sessions of Norfolk*, 5 Mass. 435. See further provisions in ch. 399, § 5, vol. 3, p. 249; and ch. 590, § 5, vol. 3, p. 347; and Act, passed Mar. 9, 1832, ch. 42, § 1.



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and finally determine the same (*g*) by a new committee, if the person complaining and the agent for the town in which the highway is laid out can agree thereon, or by a Jury under oath, if the person complaining desire the same : which Jury shall be summoned and attended by the Sheriff of such county or his deputy, or if he or either of his deputies be a party or interested, by a Coroner of said county : and shall be selected in manner following, to wit : The officer who shall be duly authorized by said Court, shall make application to the Selectmen of two or more disinterested towns in said county, who shall draw out of the jury box of their respective towns so many jurors as such officer shall require, not exceeding nine from any one town ; and if by accident or challenge, there should happen not to be a full Jury, said officer shall fill the panel *de talibus circumstantibus*, as in other\* cases. And such officer shall make return of his own travel and attendance and that of each juror. And if the Jury or committee agreed upon as aforesaid, who are to be under oath, shall not increase the damages, the person complaining shall be at all the costs (*h*) incurred on that occasion, to be taxed against him by said Court, otherwise such costs shall be paid by the county, and the increase of damages (*i*) shall be paid by the town in which such highway is located.

Manner of selecting such Jury.

[Mass. Stat. Mar. 8, 1803, § 1.]

[\*511]

Proceedings of such jury or committee.

Costs how taxed, and increase of damages paid.

SECT. 2. *Be it further enacted*, That if the right or interest of any complainant in, or to the real estate alleged to be damaged by the laying out of such highway shall be denied by the town or corporation complained against, the Jury summoned, or committee agreed on as aforesaid, shall have authority to consider and determine such question of right or interest so far only as respects the damages of said complainant.

Proceedings, when interest of claimant is disputed.

[Mass. Stat. Mar. 8, 1803, § 2.]

(*g*) The court have no power to award the owner any thing but money in compensation for his damages. *Com. vs. Peters*, 2 Mass. 125.

(*h*) See note to § 6.

(*i*) For rules in estimating damages, see *Com. vs. Coombs*, 2 Mass. 489; *Com. vs. Sessions of Norfolk*, 5 Mass. 435; *Com. vs. Sessions of Middlesex*, 9 Mass. 388; *Callender vs. Marsh*, 1 Pick. 418. See ante, note a 3, to § 1.



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Time allowed  
to owner to  
take off wood,  
&c.

[Ib. § 4.]  
[Sec ch. 500, §  
7, vol. 3, p.  
347.]

Verdict or re-  
port to be final.

[Mass. Stat.  
Feb. 27, 1787,  
§ 5.]

Persons injur-  
ed may join, or  
sever, in com-  
plaints for  
damages.

[Mass. Stat.  
Mar. 8, 1803,  
§ 3.]

Towns and  
corporations  
aggrieved may  
apply for new  
committee or  
jury in same  
manner, as in-  
dividuals.

[\*512]

[See ch 500,  
vol. 3, p. 345.]  
[Ib. § 6]

SECT. 3. *Be it further enacted*, That committees and jurors that shall assess damages occasioned by laying out any highway, shall give the owner of said land a reasonable time to take off the wood, timber or trees (*j*): and if the owner of such land shall neglect to take off said wood, timber or trees, within the time set by said committee or Jury, it shall be forfeited for the benefit of the road.

SECT. 4. *Be it further enacted*, That the verdict of such Jury, or the report of the committee agreed upon as aforesaid being made under their hands to said Court, and by them accepted and recorded, shall conclude the person or persons complaining with respect to the damages.

SECT. 5. *Be it further enacted*, That when two or more persons have occasion to apply to any Court of Sessions at the same time for joint or several damages occasioned by the laying of the same highway, they may join in the same complaint, and their respective claims of damages shall in that case, be considered and determined by the same Jury or committee, and the costs shall be taxed jointly or severally as the Court in their discretion may determine to be equitable.

SECT. 6. *Be it further enacted*, That if any town or other corporation shall find themselves aggrieved by the doings of\* a committee of the Court of Sessions in any county, in estimating damages by virtue of this act, such town or corporation may apply to said Court, and be allowed a jury or committee to hear and finally determine their complaint, in the same manner, under the same limitations and conditions, as are provided in this act in the case of an individual person (*k*).

SECT. 7. *Be it further enacted*, That when any person shall be aggrieved by the doings of a committee in estimating

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(*j*) Where no time is allowed by the court for such purpose, the S. Court on certiorari will not presume that any wood, &c. was growing on the land. *Com. vs. Westborough*, 3 Mass. 408.

(*k*) Where a corporation, dissatisfied with the damages reported by a committee for laying out a highway, applies to the Court of Sessions for a jury, where the damages are reduced, no costs arising upon such application can be taxed for the owner of the land. *Com. vs. Carpenter*, 3 Mass. 268.



damages, and shall apply to the Court having jurisdiction in this behalf, and the town or corporation shall apply in like manner, and both applications are or shall be pending before the same Court, then the same Court may hear and finally determine both applications, by one and the same jury or committee, and not by two several juries or committees: and the party whose complaint shall appear to have been without just cause, shall be at all the costs incurred on that occasion, to be taxed against him by the Court: and the verdict of the jury or the report of the committee agreed upon, being made under their hands to the said Court, shall be final.

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When owners of land and corporation both apply for Jury, same Jury to try both complaints, &c.

[Damages limited, see ch. 800, § 8, vol. 8, p. 141.]

SECT. 8. *Be it further enacted*, That the Court of Sessions may order the payment of such sum or sums of money as shall be assessed in damages to be paid by any town, in consequence of this act, out of the treasury thereof: and in default of payment after a reasonable time, may levy the same by warrant of distress upon the personal property of the inhabitants, to the use and benefit of the person or persons to whom the damages may be awarded (*l*).

Court of Sessions may order payment of damages;

and if not paid issue warrant of distress.

[Mass. Stat. Feb. 27, 1787, § 6.]

SECT. 9. *Be it further enacted*, That the Selectmen (*m*)

(*l*) See "An Act giving remedies on Judgments, rendered by Courts of County Commissioners; and prescribing the mode of levying executions against towns and plantations," passed Feb. 27, 1833, ch. 64; see also, note *r*, to § 9, of above chapter.

(*m*) 1. A vote of the town that the selectmen shall lay out a particular town way, is unauthorized and improper, it being the intention of the statute that the selectmen shall exercise their own discretion upon the subject. *Kean vs. Stetson*, 5 Pick. 492.

2. It is necessary to the legality of a town way, that due notice be previously given by the selectmen to all persons interested in the location;—that they make a return of their doings under their hands, to the town;—and that it be accepted and allowed by the town, at a legal meeting, called for that purpose. The two latter facts may be proved by the record; but the return of the selectmen is not sufficient evidence of the notice. Where a town way has been opened, publicly used, and acquiesced in, the legal presumption is, that the owners of the land were duly notified of its location. *Harlow vs. Pike*, 3 Glf. 438.

3. The regularity of the proceedings in the location of a town way, may be contested in an action of trespass *quare clausum fregit*, against the surveyor who proceeds to open and make it; no *certiorari* lying to quash such proceedings. *Ib.* See *Loring vs. Bridge*, 9 Mass. 124.



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Selectmen may lay out town and private ways; [Ib. § 1.]

to be approved by the town.

Towns may discontinue or alter such ways.

[\*513] Damages to persons injured to be paid as agreed by selectmen and such persons, or settled by jury, &c.

of the several towns in this State, are hereby authorized and empowered, either personally or by such person or persons as they shall appoint, to lay out town or private ways for the use of such town only, or for one or more individuals thereof, or proprietors therein ; but no such town or private way shall be established until the same has been reported to the town at some public meeting of the inhabitants held for that purpose, and by them approved and allowed (n). And any town may alter (o) or discontinue any town or private way when it shall appear that the same is unnecessary for the inhabitants of such\* town. And if any person or persons who are owners(p) of the land through which such way shall be laid out, be injured thereby, he or they shall receive such recompense as the party injured and the Selectmen (q) shall agree upon, to be paid by the town or person or persons for whose use the said way is laid out ; or in case of disagreement, as shall be ordered by the Court of Sessions upon an inquiry into the same by a special committee, if the parties agree thereto, or by a jury to be summoned and selected in the

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(n) 1. The laying out by the selectmen must be recorded before offered for acceptance by the town. *Com. vs. Merrick*, 2 Mass. 529.

2. A record of the establishment of a town way cannot, it seems, be presumed from a use of it. *Com vs Low*, 8 Pick. 408. See onward, note c, 2, to § 17, of this chapter.

3. The acceptance of a town way should take place at a town meeting, called for that purpose after the laying out, and by a warrant containing notice that the report of the selectmen in regard to the way laid out by them is to be considered at such meeting. *Kean vs. Stetson*, 5 Pick. 492.

4. Where a town way has been laid out by the selectmen and approved by the town, it is immediately a way, although the party aggrieved has a time allowed in which to apply for a discontinuance. *Craigie vs. Mellen & als.* 6 Mass. 7.

(o) Establishing an alteration in a highway is in law a discontinuance of the part altered. *Com. vs. Westborough*, 3 Mass. 406; *Com. vs. Cambridge*, 7 Mass. 158.

(p) Any person having an interest in the land, either as lessee for years, tenant for life, or for any greater estate of freehold, as also he in reversion or remainder, is an owner within this provision. *Ellis & al. vs. Welch*, 6 Mass. 251.

(q) The selectmen are not to estimate the damages in such case, but if they and the owners of the land cannot agree on the amount, the latter must apply to the Court of Sessions. *Craige vs. Mellen & als.* 6 Mass. 7.



manner prescribed by the first section of this act†. And such committee or jury shall assess damages for the injured party to be paid (r) by such town or person or persons as aforesaid.

SECT. 10. *Be it further enacted, (s)* That if the Selectmen shall unreasonably delay, or refuse to lay out or cause to be laid out, any such private way, as before described, being thereunto requested in writing by one or more of the inhabitants or proprietors of land in such town, then the Court of Sessions for the same county, at any session thereof within one year, if the request appear to them reasonable, may cause the same private way to be laid out at the cost of the persons applying, by a committee of three disinterested freeholders, which committee shall estimate the damages occasioned thereby (if any there be) as well as ascertain the place and course of the said private way (t); the damages to be paid by the town, if it be of general benefit, otherwise by the person or persons for whose use and benefit the way is laid out; and the Justices of the respective Courts of Sessions upon application to them made by any party aggrieved at the continuance of any private way, may order and direct a discontinuance thereof, after notifying and hearing the parties interested therein, if they shall thereupon adjudge and determine such discontinuance reasonable.

SECT. 11. *Be it further enacted,* That when any town shall unreasonably delay or refuse to approve and allow of any

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[†Application for damages to be made within 12 months; see ch. 399, § 5, vol. 3, p. 249.]

If selectmen refuse or delay to lay out such way, what proceedings to be had.

[Ib. § 2.]

[See act passed Mar. 4, 1828, ch. 79, § 8.]

If towns refuse or delay unreasonably

(r) The damages being determined, may be recovered by action of debt, at any time after thirty days succeeding a demand. See ch. 399, § 6, vol. 3, p. 250. But by ch. 500, § 7, vol. 3, p. 348, the time when the damages shall be paid is to be determined by the court, but not to exceed three years from the assessment thereof.

(s) 1. Under the provisions of § 10, it was competent for the Court of Sessions, to impose as a condition on granting the prayer of a petition for a new highway, that the expense of its location should be borne by the petitioners. *Patridge vs. Ballard & al.* 2 Glf. 50.

2. The petitioners in such case are not bound to cause the road to be laid out. *Ib.* See *Com. vs. Savin & al.* 2 Pick. 547.

(t) The town must be notified before any proceedings are had by the Court of Sessions. *Com. vs. Metcalf*, 2 Mass. 118; *Com. vs. Sheldon*, 3 Mass. 188.



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to approve  
such ways, &c.  
proceedings in  
such cases.

[Ib. § 8.]

[\*514]

Court to allow  
reasonable  
time for open-  
ing highway,  
[†Not exceed-  
ing 3 years; see  
ch. 500, § 7,  
vol. 8, p. 348.]  
[Mass. Stat.  
Feb. 28, 1797,  
§ 6.]  
not exceeding  
12 months, un-  
less, &c.

If towns neg-  
lect their duty,  
proceedings to  
be had.

All highways  
to be kept in  
repair.

private way laid out by the Selectmen thereof or their order, and put the same on record, any person or persons aggrieved by such delay or refusal may apply to the Court of Sessions for the same county, within twelve months after such refusal or delay ; and the same Court after hearing the town thereon, may accept and approve of the said private way,\* as laid out by the Selectmen, and direct the same to be recorded in the town book ; or they may order the private way petitioned for, to be laid out by a committee of three disinterested freeholders to be by them appointed for that purpose, which committee shall be under similar directions and obligations as to locating and estimating the damages occasioned thereby, as in this act is prescribed for a committee in locating or altering a county highway.

SECT. 12. *Be it further enacted*, That when any new highway shall be laid out and accepted by the Court of Sessions, a reasonable time† shall be allowed to the town through which such highway shall lead to make it passable, safe and convenient for travellers and others passing with their teams, waggon, or other carriages : *Provided*, That such time shall not exceed twelve months from the time of such acceptance ; unless such Court shall for reasons specially given, order a longer time. And if any town shall neglect their duty in that respect the said Court, on application therefor, shall appoint a committee of three disinterested freeholders in the same county, to enter into any contract or contracts for making such new highway passable as aforesaid, the expense of which shall be immediately afterwards defrayed by the delinquent town, and in default thereof, the said Court shall issue a warrant of distress against such town.

SECT. 13. *Be it further enacted*, That all highways, town ways, causeways and bridges, (u) lying and being within the bounds of any town, shall be kept in repair (v) and amend-

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(u) The selectmen of any town are authorized to prohibit any person from riding or driving at a pace faster than a walk over any bridge covered with plank for the length of fifty feet; such bridge being part of a highway or town way within the limits of such town. *See act, passed Feb. 20, 1883.*

(v) An indictment against a town for neglect to repair a highway, must allege the offence *contra forma statui* or it will be quashed. *Com. vs. Springfield, 7 Mass. 9. See act, March 5, 1882, ch. 27.*



ed from time to time, that the same may be safe and convenient for travellers with their horses, teams, carts and carriages, at all seasons of the year, at the proper charge and expense of the inhabitants of such town (where other sufficient provision is not made therefor) and there shall be chosen two or more suitable persons, in each town, at the annual meeting in March or April, who shall be denominated surveyors (*w*) of highways, to be notified and sworn in like manner as other officers of the same town, and in case of refusal to serve shall forfeit and pay the sum of ten dollars, to the use of such town : *Provided* no person shall be held and obliged to serve more than one year in three years. And it shall be the duty of the Selectmen of the several towns within this State, before\* the first day of May annually, to assign (*x*) in writing, to the several surveyors, their divisions and limits for making and repairing the highways, which assignments the said surveyors are directed to observe ; and whenever any town shall elect the Selectmen surveyors of highways, they shall be authorized to delegate said power in writing to such person or persons as they may deem proper. And each town, at some public meeting of the inhabitants thereof, regularly notified and warned, shall vote and raise such sum of money, to be expended in labour (*y*) and materials on the highways†, as they shall determine necessary for the purpose. And the Assessors shall assess the same on the polls and rateable estate, personal and real, of the inhabitants, residents and non-residents of their town, as other town charges are by

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[Mass. Stat.  
Mar. 5, 1787,  
§ 1.]

Surveyors to  
be annually  
chosen and  
sworn.

Selectmen to  
assign limits  
to surveyors.

[\*515]

[Ib. § 2.]

Towns to raise  
money for re-  
pairing roads ;

[Ib. § 3.]

[†And bridg-  
es ; see ch. 399,  
§ 4, vol. 3, p.  
249.]

to be assessed  
as other town  
charges.

(*w*) A surveyor cannot employ persons to labor at the expense of the town, without the consent of a majority of the selectmen. *Haskell vs. Knox*, 3 Glf. 445. See onward, note *b*, to § 15.

(*x*) This provision is only directory ; and the powers of surveyors do not depend on its execution ; and if no assignment is made, perhaps the surveyors must act together, or by the voice of the major part of the whole. *Callender vs. Marsh*, 1 Pick. 418.

(*y*) 1. This cannot be assessed as a money tax. *Libby vs. Burnham & als.* 15 Mass. 144. See act, March 5, 1832, ch. 27, § 2.

2. By ch. 427, vol. 3, p. 269, an abatement not exceeding three dollars may be made in the highway tax of any person who shall exhibit to the Assessors satisfactory evidence of his owning and exclusively using on the public roads, cart wheels having rims seven inches in width.



**CH. 118.** law assessed, and deliver to each surveyor a list (z) of the persons and the sums at which they are severally assessed for his limits ; and two thirds of the sum at least which shall be agreed upon and granted by any town for making or repairing the highways, shall be laid out and expended for that purpose before the first day of July next after granting the same ; and the surveyor shall give reasonable notice (in writing if desired) to each person in his list of the sum he is assessed to the highways, and also to the inhabitants within his district assessed as aforesaid, forty-eight hours notice, (extraordinary casualty excepted,) of the times and places he shall appoint for providing materials and labouring, to the end each person may have opportunity to work on the highways in person or by his substitute, or with his oxen, horses, cart and plough, at the rates and prices the town shall affix to such labour, to the full amount of the sum at which he is assessed, or he may pay the surveyor in money the sum he is assessed, in which case the surveyor shall carefully expend the sums thus paid, in labour and materials for repairing the highways in his limits, according to his best discretion. And when the highways are blocked up or incumbered with snow, the surveyor shall forthwith cause so much thereof to be removed or trodden down as will render the roads passable, and in such way and manner as the town shall direct at their annual meeting ; and in case of any sudden injury to bridges or highways he shall, without delay cause\* the same to be repaired. And the surveyor, at the expiration of his term, shall render to the Assessors for time being, a list of such persons as shall have been deficient, (if any such there be,) in working out their highway rate, or otherwise paying him the sum assessed therefor ; which deficient sums shall by the Assessors be put in a distinct column, in the next assessment for the town tax, and collected by the Constable or Collector thereof, as other town taxes are collected, and paid into the town treasury for the use of the town.

Two thirds to be expended before July 1st.

Surveyor to notify those in his district.

To clear roads blocked with snow,

and repair bridges, &c. suddenly injured.

[\*516]

To render an account to the assessors at the end of his term.

Deficient sums to be inserted in next assessment of town taxes.

Power of surveyors in removing ob-

**SECT. 14.** *Be it further enacted,* That the surveyors, thus chosen and sworn, shall have full power and authority to

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(z) "On or before the first day of June." *Act passed Feb. 29, 1882, ch. 21.*



cut down, lop off, dig up and remove all sorts of trees, bushes, stones, fences, rails, gates, bars, inclosures, or other matter or thing that shall any way straiten, hurt, hinder, or incommode the highway, and also to dig for stone, gravel, clay, marle, sand or earth, in any land not planted or inclosed, and the materials thus dug up to remove to such place or places in the highways, for the repair and amendment thereof as they shall determine necessary (a). *Provided always*, That no surveyor of highways shall cause any water course occasioned by the wash of any highway to be so conveyed by the side of such highway as to incommode any person's house, store, shop, or other building, or to obstruct any person or persons in the prosecution of his or her business or occupation, without the approbation and consent of the Selectmen of such town or other place signified in writing to such surveyor: and any person or persons who may consider him or herself to be aggrieved by such water course, may complain to the Selectmen of such town or other place: and the Selectmen on receiving such complaint, shall proceed to view such water course so complained of, and after attending to the circumstances of the same, shall if they think it reasonable, direct such surveyor to alter the said water course in such way and manner, as they shall think just and proper.

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structions and obtaining materials.

[Mass. Stat. Mar. 5, 1787, § 1.]

Proviso, limiting surveyor's power.

SECT. 15. *Be it further enacted*, That when the sum appropriated and assessed for the repair of the highways, in the limits of any particular surveyor shall not fully answer, or be insufficient for that purpose, it shall be lawful (b) for the surveyor,\* with the consent of the Selectmen, or the major

When sum assessed is not sufficient, duty and power of surveyor.

[Ib. § 4.]

[\*517]

(a) Under this general authority, a surveyor may dig down, or raise a street; and if he does it with discretion and not wantonly, a party injured cannot maintain an action against him, nor it seems against any other person. *Callender vs. Marsh*, 1 Pick. 418. To *repair* means probably to replace or remake; but the word *amend* is broad enough to cover any thing which may tend to make the road better. *Ib.* 429. See *Thurston vs. Hancock*, 12 Mass. 220.

(b) This duty is enjoined on the surveyor in all cases where the town has not made provision for *effectually* repairing the highways within his district. *Wood vs. Waterville*, 5 Mass. 298. But a surveyor of highways has no authority to repair a way at his own expense and then to call upon the town for indemnity. *Jones vs. Lancaster*, 4 Pick. 149. See ante, note to, to § 13.



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[Power of surveyor restricted; see ch. 200, § 2, vol. 3, p. 140.]

part of them, where such deficiency happens, to employ such of the inhabitants of the town, upon the repair of the ways in his limits, as shall make up that deficiency : and the persons thus employed shall be equitably paid out of the town treasury therefor, or the town may authorize the surveyor to agree with the persons employed, that for such labour they shall be allowed on the next highway tax, or otherwise compensated, as the town may have prescribed.

Towns may authorize surveyors to make contracts for repair of highways,

[Mass. Stat. Feb. 28, 1797, § 5.]

and to collect taxes, &c.

Assessors may deliver to surveyors, warrants of distress, or to collectors of taxes.

Money unexpended to be paid into town treasury.

Penalty for surveyor neglecting to pay over surplus, &c.

SECT. 16. *Be it further enacted*, That every town may at their annual meeting, or any meeting warned for that purpose, authorize their surveyors, or any other person or persons to enter into any contract or contracts for making or repairing the highways within the same or any part thereof; and may also empower their surveyors of highways to collect taxes for making and repairing the ways which shall not be paid in labour or otherwise within the time limited by law, or such periods as may be agreed upon by such town, and for that purpose the Assessors shall deliver to them warrants of distress which shall be in the form prescribed by law for collecting other town taxes, *mutatis mutandis*; or they may deliver to the Collector or Collectors of taxes a warrant for collecting the deficiency in any highway tax which the Collector is hereby empowered and required to levy in the same way and manner as other taxes are by law to be collected, and pay the same over to the surveyor or surveyors, who shall be held to account with the Selectmen for the expenditure thereof. And if any money shall remain unexpended in the hands of the surveyor or surveyors after the expiration of their office, they shall pay the same to the town Treasurer. And if any surveyor shall neglect to pay over such sums to the said Treasurer upon demand, the said Treasurer, or his successor in that office, shall have power to recover the same, in an action upon the case, with twenty per cent. in addition thereto, to the use of the town, with costs of suit : and if pending the action, another town Treasurer shall be appointed, he, on noting his appearance on the record, shall have power to pursue the same action to final judgment and execution. And if any surveyor who shall receive his rate bill of the Selectmen or Assessors of any\*



town shall neglect to exhibit the same to them on the first Monday of July annually, and also at the expiration of the term for which he shall be appointed, and at those times respectively to render an account of all monies that have been expended on the ways, he for each offence shall forfeit and pay twenty dollars, to be recovered in an action of debt with costs of suit by the said Treasurer to the use of the town.

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or neglecting to exhibit his rate bill to selectmen in July annually.

SECT. 17. *Be it further enacted*, That if any person shall lose a limb, break a bone, or receive any other injury in his person, or in his horse, team or other property, through any defect (c) or want of necessary repair and amendment of any highway (d), causeway or bridge; the person or persons injured thereby shall and may recover of the county, town, the person or persons who are by law obliged to keep the same highway, causeway, or bridge in repair, in case they had reasonable notice (e) of the defect, double the damages

Counties and towns liable to pay damages to persons injured by badness of roads.

[Mass. Stat. Mar. 5, 1787, § 7.]

(c) 1. A town is not liable in any form, for the deficiency of a road, unless, by regular legal proceedings, or by usage and acquiescence for a sufficient term of time, they have acquired the right to enter upon the land, and make and repair the road. *Todd vs Rome*, 2 Glf. 55.

2. Such use and acquiescence for twenty years, and perhaps for a shorter period, may be considered sufficient to give a town a right, and subject them to liability to repair, and to its legal consequences. *Ib.* But in *Com. vs. Low*, 3 Pick. 408, it was held, that exclusive and uninterrupted use by a town for twenty years unexplained is evidence of a grant; but such way will be a private way, and a nuisance on it will not be indictable. See ante, note n 2, to § 9; also, *Com. vs. Charlestown*, 1 Pick. 180.

3. No action at common law lies against a town for damages sustained through a defect in the highway in said town. *Mower vs. Leicester*, 9 Mass. 248. See *Com. vs. Springfield*, 7 Mass. 9.


4. A traveller, in order to recover damages in such case, for loss caused by a deficiency in a road, is not bound to look far ahead in order to guard against obstructions which ought not to be suffered to exist. *Thompson vs. Bridgewater*, 7 Pick. 188.

5. Towns are liable under this provision for injuries occasioned by large stones left in the road, as well as for those occasioned by any defect in it.—*Bigelow vs. Weston*, 8 Pick. 267.

(d) This term includes town-way. *Jones vs. Andover*, 6 Pick. 59.

(e) 1. In an action for such injury, it is not necessary that the surveyor or selectmen had notice of the existence of the nuisance, if it were seasonably known to other inhabitants of the town. *Springer vs. Bowdoinham*, 7 Glf. 442.



**CH. 118.**  thereby (*f*) sustained by a special action of the case, before any Court proper to hear and determine the same : and if the life of any person shall be lost through the deficiency of the way, causeway or bridge, or for want of rails on any bridge, the county, town, or persons who are by law obliged to repair and amend the same, shall be liable to be amerced in the sum of three hundred dollars, to be paid to the executor or administrator of the deceased for the use of his heirs, upon a conviction before the Circuit Court of Common Pleas, or Supreme Judicial Court, on a presentment or indictment of the Grand Jury.

Penalty in case of life lost.

Mode of recovery.

When towns are fined for bad roads, surveyor, in whose district it lies, answerable to the town :

[*Ib.* § 11.]

provided the fault or neglect is on his part.

[\*519]

**SECT. 18.** *Be it further enacted,* That in case the inhabitants of any town shall be fined upon the presentment of the Grand Jury, or upon the information (*g*) of the Attorney General, or the person acting for the State in his absence, for a deficiency in the highways, the surveyor, within whose limits the deficient ways are, shall be liable to refund the same, with all costs, to the said inhabitants, upon an action of the case to be brought therefor, or the surveyor of highways may be prosecuted on presentment or information as aforesaid, and fined for any deficiency that may arise in his limits : *Provided,* Such deficiency shall arise from the negligence of the surveyor in not duly expending the money in his bills, or in not giving notice of such deficiency to the Selectmen in\* case the sum raised for the repair of the highways by the town, shall be found insufficient for that purpose.

2. What is reasonable notice to a town, of the existence of a nuisance in the highway, is a question of law. *Ib.*

8. A surveyor of highways may recover damages happening to him, against his town, through a defect in the highways within in his own district, unless the defect arises *from his own neglect.* *Wood vs. Waterville, 4 Mass. 422.* But if the defect is attributable to his own neglect, it will be otherwise. *Same vs. Same, 5 Mass. 294.*

(*f*) In such case the jury are to assess single damages, and the court double them. *Lobdell vs. New Bedford. 1 Mass. 153.*

(*g*) 1. Towns are punishable by information for not opening public highways newly laid out, as well as for not keeping them afterwards in repair. *State vs. Kittery, 5 Glf. 254.* See ch. 500, § 7 & 9, vol. 3, p. 348 : also, ch. 370, § 3, vol. 3, p. 223, & ch. 452, vol. 3, p. 295.

2. When a town is fined for the repair of a highway, the Clerk of the Court is required to certify the same to the assessors of such town, by ch. 300. § 4, vol. 3, p. 141.



**SECT. 19.** [Repealed; see Act passed Feb. 27, 1882, ch. 17.]

It authorized towns having a population of eight hundred, to raise money for making and repairing highways, and to assess it on the polls and estate, real and personal of the inhabitants, residents and non-residents.]

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**SECT. 20.** *Be it further enacted,* That all fines imposed by the Supreme Judicial Court, or by the Circuit Court of Common Pleas within this State, or any town for any neglect in making or repairing any highways or bridges within the same, shall be appropriated and disposed of, for the making and repairing the highways and bridges so defective as aforesaid (*h*).

Fines how to be expended.

[Mass. Stat. Feb. 29, 1812, § 1.]

**SECT. 21.** *Be it further enacted,* That the Supreme Judicial Court or the Circuit Court of Common Pleas shall, at the session when any such fine shall be imposed as aforesaid, appoint† one or more person or persons to superintend the collection and appropriation of the same for the purposes aforesaid; whose duty it shall be to attend to the collection of such fine, and the appropriation thereof in manner aforesaid; and shall make return of his or their doings therein to the Court, that may have imposed said fine, whenever thereto by them required.

Courts to appoint agents to superintend collection and expenditure of fines.

[Ib. § 2.]

[†See ch. 300, § 6, vol. 3, p. 141.]

Return of their doings.

**SECT. 22.** *Be it further enacted,* That the inhabitants of plantations who are or shall be empowered and required to assess taxes upon themselves towards the support of government, or for defraying the charges of any county, shall be vested with like powers, be under the like obligations, and liable to like penalties, so far as such powers, obligations and penalties have any relation to the making, repairing or amending the highways, and for compensating any individual\* who may suffer damage by laying out any highway as the towns within this State have, are under or subject to; and like proceedings shall be had by and against such plantations as may be had by or against said towns, in every case respecting the highways, *mutatis mutandis*. And the Assessors of such plantations shall be held to perform all the duties required of the Selectmen of towns relating to highways and invested with the same powers.

Plantations to have the same powers and liabilities as towns in regard to highways.

[Mass. Stat. Feb. 28, 1797, § 1.]

[\*520]

Like proceedings to be had in regard thereto.

(*h*) The Assessors are required to assess such fines upon the polls and estates of such town, in same manner as town taxes are assessed. See ch. 300, § 4, vol. 3, p. 141.



**CH. 118. SECT. 23.** *Be it further enacted,* That all highways laid out or hereafter to be laid out through any tracts of land in this State, not comprehended within the bounds of any incorporated town or plantation aforesaid, shall be made passable and convenient for travelling and kept in good repair by the owners or proprietors of the said tract of land, township or plantation, unless in the judgment of the Court of Sessions for the county in which such lands lie, it may be deemed unreasonable; in which case the same shall be done at the expense of the county, or partly at the expense of the county and partly at the expense of the proprietors,† as the said Court shall order. And all the proprietors or owners of such tracts of land, townships or plantations last mentioned, shall be held to pay their proportion, according to their interest of all cost and expenses of making and repairing the ways aforesaid through any part of the tracts, townships or plantations last mentioned: *Provided nevertheless,* That all lands reserved for the use of the first settled Minister, the ministry, schools, or for the future appropriation of the Legislature in the said tracts, plantations and townships last mentioned, shall be, and hereby are exempted from all taxes for making and repairing highways therein.

Highways through unincorporated places to be made and repaired at the expense of proprietors,

[Ib. § 2.]

unless Court of Sessions deem it unreasonable:

Proceeding in such case.

[†See act passed March 4, 1833, ch. 79, § 1.]

Proviso as to ministerial lands, &c.

On application to Court of Sessions to lay out such road.

[Ib. § 3.]

Notice to be given by newspapers.

[\*521]

On default, &c. of proprietors,

**SECT. 24.** *Be it further enacted (i),* That the Courts of Sessions in the several counties in this State, whenever application shall be made to them to lay out any new highway through any such tract, township or plantation last mentioned, or for an order thereof to amend and repair any highway already laid out in the same, the said Court shall cause notice thereof to be given, by publishing the substance of such application three weeks successively in one of the newspapers printed in the town of Portland, and such other paper as the said Court shall direct, in order that\* the proprietors of said lands may appear before said Court, at such time as the Court shall therein prefix, and show cause why such highway should not be laid out or amended, as the case may be. And if such proprietors do not appear and show cause, to the satisfaction

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(i) The authority given to Court of Sessions, by § 24, to make assessments, &c. relates only to highways laid out by the order of such courts. *Joy vs. Coy. of Oxford*, 3 Glf. 131.



of said Court, that such highway ought not to be laid out or made, or amended at the expense of said proprietors, then the said Court may proceed to lay out such highway in the manner prescribed by law, and to order the same to be made or amended at the expense of the said proprietors, as the case should require ; and shall cause an assessment to be made on such tracts of land, township, or plantation, at so much per acre as they shall judge necessary for making or mending such highway and defraying the necessary expense attending the same ; and the proprietors of the said tracts, townships, or plantations last mentioned, where the lands therein are held in severalty shall be severally assessed their respective proportions in every tax which may be ordered for making or repairing the highways therein : *Provided*, Such proprietors shall previously furnish said Court with proper documents for that purpose ; and the Treasurer of the county wherein the land so assessed may lie, shall forthwith cause such tax to be advertised in manner aforesaid, requiring each and every owner or proprietor of any part of the tract, township or plantation last mentioned, to pay said tax ; or if the assessment is made in severalty, his part thereof to said Treasurer within six months from the first publishing said advertisement, and notifying such proprietors, that unless the same shall be paid within the time specified, so much of the said land will be sold at public vendue, at a certain day and place in the said advertisement to be expressed : And when any proprietor or owner of any part of such tract, township or plantation last mentioned, (the parts thereof not being severally assessed) shall pay his proportion of such tax, he shall take a receipt therefor, describing the land for which he shall pay such tax, and so much of the remaining part of such land for which said tax shall not be paid before the expiration of the said six months, shall be sold by the Treasurer aforesaid, or his successor in office, or such committee as the Court of Sessions aforesaid shall\* appoint for that purpose, at the time and place set forth in the advertisement, as may be necessary to pay the remaining part of said tax, with incidental charges. And the said Treasurer or committee are hereby authorized to adjourn the time of sale of such land from day to day, if he or they

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Court to lay out road and assess the lands, &c.

Mode of assessing.

[See act passed Mar. 4, 1853, ch. 79, § 1.]

County treasurer to advertise the tax :

how lands are to be sold, and when, after being advertised, and taxes not paid.

[\*522]

Vendue may be adjourned.



**CH. 118.** shall judge it necessary, not exceeding three days, and make a good and sufficient deed or deeds of such lands, allowing the same time of redemption, and subject to the payment of the like interest as is by law allowed in the cases of land sold for taxes ; and the money so raised shall be applied by said Court, or by a committee to be by them appointed for that purpose, to make and repair said highways : And a similar method shall be taken from time to time by said Court for keeping in repair all highways leading through such tracts, townships or plantations last mentioned, in case the owners thereof shall neglect to keep said highway in sufficient repair.

Similar proceedings to be had for repairing such highways.

Proprietors of such lands, may call meetings, raise money, &c.

And the owners and proprietors of any such tract, township or plantation last mentioned, are hereby authorized to call meetings for the purpose of raising such sums of money as they may judge necessary for making and repairing such highways, and for choosing officers for assessing and collecting the same.

Any person may remove nuisances in highways.

[Mass. Stat. Mar. 5, 1787, § 5.]

Any person aggrieved by such removal may apply to Sessions.

Duty of surveyor to remove obstructions in highways.

[\*523]

[†See additional powers, ch. 495, vol. 8, p. 341.]

**SECT. 25.** *Be it further enacted,* That it shall be lawful for any person to pull down and remove any gates, rails, bars or fence upon or across any highway or county road, unless such gate, bars or fence have been erected or continued by the leave and license of the Court of Sessions for the same County ; and if any such incumbrance be in or across any private way, the same may be removed by the order of some Justice of the Peace of the same county, unless the gate or bars were erected or continued by the leave of the town or the person or persons for whose particular use and benefit the private way was laid out : And any person aggrieved by the removal of such gate, bars or fence, shall be relieved at the Court of sessions for the same county ; if upon examination it shall appear, that the same were erected or continued by license or leave, as aforesaid. And when any logs, lumber or other obstructions† shall, by any person be unnecessarily placed or left on any highway, it shall be the duty of the surveyor within whose limits the same may be\* so placed, or left, or in his absence, of any other surveyor within the town forthwith to remove the same : and the person so removing the same shall not be liable for any loss or damage happening thereto by such removal, unless such loss or damage was oc-



casioned by gross negligence or design : and on conviction of any person of having obstructed any highway in manner aforesaid, before any Court of competent jurisdiction, he shall be punished by a fine not exceeding five dollars to the use of the State, and double the expense of the removal of such obstruction, to the use of the person who shall have removed the same, or such person may recover the double of such expense to his own use in an action on the case : *Provided nevertheless*, That nothing in this act shall be so construed as to give power to any surveyor or other person to remove or pull down any fence which may be lawfully set up or erected upon or across any way for the purpose of preventing the spreading of infectious disorders.

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Penalty for obstructing highway by logs, lumber, &c.

Proviso, as to fences set up for preventing spread of infectious disorders.

SECT. 26. *Be it further enacted*, That when any building, fence or other incumbrance, erected or continued on any town or private way, or on any public highway, a common training field, burying place, landing place or other piece of land, appropriated for the general use, ease or convenience of the community at large, or the inhabitants of any county, or town, shall by any Court, having cognizance thereof, be adjudged and determined a nuisance, and ordered to be abated, in case the materials of such building, fences or other incumbrance, upon a public sale thereof at auction, shall be insufficient to pay the costs and charges of prosecution and removal ; the Court from whence the process for removal shall issue, shall and may order the deficient sum to be raised and levied from the goods and chattels of the person or persons who shall be convicted of erecting or continuing the same.

Buildings, fences, &c. being adjudged nuisances by Court, may be removed.

[Ib. § 6.]

[See ch. 495, vol. 3, p. 341.]

Expense of removal how to be defrayed.

SECT. 27. *Be it further enacted*, That where buildings or fences have been erected fronting upon, or against any training field, burying place, common landing place, highway, private way, street, lane, or alley in any town in this State, where from length of time or otherwise the breadth or quantity thereof is not known, or can be made certain by the records,\* or by any other boundaries ; and such buildings or fences have been upheld, maintained and continued for more than forty years, such fences or buildings shall be deemed and

Buildings, fences, &c. fronting on certain public grounds, where the true bounds cannot be known after 40 years standing are to be considered the true bounds.

[\*524]

[Ib. § 7.]



CH. 119. taken to be the true ancient (*j*) boundaries thereof ; but no length of time (under three score years) shall justify the continuance of a fence or building on any town or private way, or on any public highway, a common training field, burying place, landing place or other piece of land appropriated for the general use, ease or convenience of the community at large, or for the inhabitants of any particular county, town, or parish, but the same may be removed by order of the Circuit Court of Common Pleas, or the Supreme Judicial Court, as a nuisance, upon the presentment (*k*) of a Grand Jury. [Approved March 2, 1821.]

In other cases sixty years prescription necessary to justify continuance of fence, &c.

Additional Act, ch. 227, vol. 3, p. 60.

## Chapter 119.

AN ACT for enabling Proprietors of Private ways and Bridges to repair them in equal proportion.

How meetings of such proprietors are to be called.

[Mass. Stat. Nov. 12, 1787, § 1.]

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That when and so often as any number of the proprietors and rightful occupants of any private way or bridge, where there are four, or more than four of them, shall judge a proprietors' meeting necessary, three of them applying to a Justice of the Peace within and for the county where the said way or bridge lies, such Justice is hereby authorized and empowered to grant a warrant for calling the same ; or otherwise one fourth part of the said proprietors may, of themselves, call such meeting ; in either case to be done by warrant under the hand of the said Justice, posted up in some public place or places, in the town or towns where the said proprietors and rightful occupants live respectively, seven days at least before the time appointed for such meeting, signifying the time, place and business

(*j*) *Binney vs. Proprietors of lands in Hall*, 5 Pick. 503.

(*k*) An indictment lies for a nuisance on a *town way*; and the continuance of the nuisance need not be alleged to be with force and arms. *Com. vs. Gowen*, 7 Mass. 378.



thereof ; and the major part of the proprietors and rightful occupants so assembled, shall have full power to determine by a major vote on any other way of calling meetings in future, and to choose a Clerk and surveyor, who shall be sworn to the faithful discharge of their respective\* trusts, as town officers are ; and to determine what repairs on the said way or ways, bridge or bridges, are necessary ; and also each proprietor's and occupant's proportion of labour and materials necessary for repairing the said way or ways, bridge or bridges ; and such surveyor, so chosen and sworn, shall have the same power with respect to such ways or bridges, as the surveyors of highways are by law invested with ; and shall be governed by the same rules as are prescribed by law for their direction ; and in case of neglect or refusal of any proprietor or occupant, in attending the said work by himself or other sufficient person in his stead ; or furnishing materials when required by the said surveyors, necessary for the repair of the said ways or bridges, agreeable to the determination of the said proprietors ; he or she shall be subject to the same fines and penalties as are provided in case of town highways, and to be recovered in the same manner.

SECT. 2. *Be it further enacted*, That if any surveyor, chosen as is provided by this act, shall refuse or neglect to accept that trust, and take the oath aforesaid, he shall forfeit and pay the sum of four dollars, to be recovered in manner aforesaid : and all fines and forfeitures incurred by breach of this act, shall be applied for the use of the propriety for repairing the said ways or bridges.

SECT. 3. *Be it further enacted*, That it shall and may be lawful for said proprietors, and the rightful occupants of private ways and bridges, at any meeting legally assembled for that purpose, to authorize their surveyor, or any other person or persons to contract by the year, or for a longer or a shorter time, for the making and keeping in repair any private way or ways, bridge or bridges ; and at any such meeting may vote to raise any sum or sums of money they may deem necessary for carrying such contracts into effect ; and may choose Assessors, who shall assess all sums of money so raised on each proprietor's or occupant's proportion therein ;

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May agree on the mode of calling future meetings, and choose clerk and surveyor—to be sworn.  
[\*525]

Proceedings as to repairs.

Penalty on surveyor's refusal to accept.

[Ib. § 2.]

Fines how applied.

May authorize their surveyor to make contracts for repairing, &c.

[Mass. Stat. Mar. 11, 1802.]

and raise money to carry them into effect.



## CH. 120.

May assess and collect taxes, &c. as in case of highways.

[\*526]

Penalty on surveyor for neglect.

and shall also deliver true lists of said assessments to the said surveyor, with warrants of distress in form, as to substance, as is prescribed by law for collecting town taxes ; and every such surveyor is hereby authorized and empowered to levy and collect all taxes or assessments for the\* purposes aforesaid, in the same way and manner as surveyors of highways are empowered to collect town highway taxes, in and by “An Act directing the method of laying out, and making provision for the repair and amendment of highways ;” and if any such surveyor shall neglect or refuse to pay over the monies so collected to such person or persons as he, in his warrant of distress shall be required, when demanded, he shall be liable to the same penalties as in and by the said law is provided, in case of surveyors failing to pay over monies to the town Treasurer in the like case. [Approved February 28, 1821.]

## Chapter 120.

AN ACT making provision for erecting Guide Posts upon public Roads.

Towns, &c. to erect and keep guide posts.

[Mass. Stat. Feb. 28, 1798, § 1.]

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That it shall be the duty of the inhabitants of the several towns in this State, and also such plantations as are assessed in any public tax, to provide, erect, and keep in repair such guide posts upon all public roads, at such places, and in such manner, as is hereafter in this act provided.

Selectmen, &c. to direct where they shall be placed, and a record of such places to be made.

[Ib. § 2.]

SECT. 2. *Be it further enacted,* That the Selectmen of the several towns, and the Assessors of all plantations, assessed in any public tax, in this State, be and they hereby are authorized and required from time to time to fix and determine upon such places at the corners and angles of all roads in the several towns and plantations aforesaid, at which the said guide posts shall be erected and kept, as in their judgment shall be found necessary and convenient, and shall cause a fair record thereof to be entered and kept among the records of the said towns or plantations.



**SECT. 3.** *Be it further enacted,* That the guide posts to be erected and kept in pursuance of this act, shall be constructed in manner following, that is to say ; there shall be erected at the several corners or angles of the roads aforesaid, at such places as shall be ordered by the Selectmen of towns,\* or Assessors of the plantations aforesaid, a substantial post of not less than eight feet in height, upon the upper end of which shall be placed a board or boards, upon each of which boards shall be plainly and legibly painted the name of the next town, with such other noted town or place, as may be judged most expedient for the direction of travellers, to which each of the roads may lead, together with the distance or number of miles to the same ; and also the figure of a hand with the fore finger thereof pointing towards the town or place to which the said roads may lead : *Provided nevertheless,* That the inhabitants of the several towns and plantations aforesaid, duly qualified to vote in town or plantation affairs, may, if they judge fit, annually agree upon some suitable substitute in the room of said guide posts, and appoint any proper person or persons to superintend the erecting the same.

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Manner of their construction.

[Ib. § 3.]

[\*527]

Towns may agree on a substitute for such guide posts.

**SECT. 4.** *Be it further enacted,* That if the inhabitants of any of the towns or plantations aforesaid shall neglect or refuse to erect and maintain said guide posts in such places and in such manner as is herein provided, the said inhabitants shall forfeit and pay, to the use of the State, five dollars for every month which they shall so neglect or refuse : And if the Selectmen of the several towns or Assessors of the several plantations aforesaid, shall neglect or refuse to fix and determine upon any places in the towns and plantations aforesaid, at which the said guide posts shall be erected and kept, by the time in this act set and limited, the said Selectmen or Assessors shall forfeit and pay, to the use of the State, five dollars for every month which they shall so neglect or refuse ; said penalties and forfeitures to be recovered by indictment of the Grand Jury in the county where the offence may be committed.

Penalty on towns for their neglect.


[Ib § 4.]

On selectmen, &c. for their neglect.

**SECT. 5.** *Be it further enacted,* That if any person shall injure, mar or deface any guide post, or its substitute

Penalty for injuring guide



**CH. 121.**  agreed upon as aforesaid, or board which shall be set up, as is in this act provided, and be convicted thereof before any Justice of the Peace within this State, such person, so convicted, shall forfeit a sum not more than six dollars nor less than two dollars ; one half to the complainant, and the other half to the\* use of the town or plantation in which such guide post or its substitute, so injured, marred or defaced was set up, and shall pay all costs of the prosecution. [Approved February 28, 1821.]

posts or substitutes.

[Ib. § 5.]

[\*529]

## Chapter 121.

AN ACT for regulating Drains and common Shores.

Penalty for breaking up highway, &c. to lay drains without consent of selectmen.

[Mass. Stat. Feb. 20, 1797, § 1.]

How common shores must be made.

[Ib. § 2.]

Owners of private drains connected with main drain to assist in paying expense of it.

**SECT. 1.** *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That if any person shall dig or break up the ground in any highway, street or lane in any town, for the laying, altering, repairing or amending of any drain or common shore without the consent of the Selectmen of the town, signified in writing, under the hand of the Town Clerk, such person shall forfeit and pay four dollars for each offence, to the use of the poor of the town, to be recovered with costs of suit, in an action of debt, by the Treasurer thereof, before any disinterested Justice of the Peace in the county.

**SECT. 2.** *Be it further enacted,* That all drains and common shores for the draining of cellars which shall hereafter be made or repaired in any streets or highways, shall be substantially done with brick or stone, or with such other materials as the Selectmen of the town shall permit ; and in such manner as the said Selectmen shall direct. And when any one or more of the inhabitants of any town, shall, by the consent and under the direction aforesaid, at his or their own charge, make and lay any common shore or main drain, for the benefit of themselves and others who may think fit to join therein ; every person who afterwards shall enter his or her particular drain into the same ; or by any more remote means shall receive any benefit thereby, for the draining of their



cellars or lands, shall be held to pay to the owner or owners of such common shore or main drain, a proportionable part of the charge of making or repairing the same, to be ascertained and determined by the Selectmen of the town or a major part of them, and certified under their hands; saving always to the party aggrieved at any such determination, a right of appeal to the Court of Sessions.

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Amount to be settled by the selectmen or Court of Sessions.

SECT. 3\*. *Be it further enacted*, That when any common shore or main drain shall be stopped or gone to decay so that it shall be necessary to open the same in order to repair it, or remove such stoppage, all the persons who shall be benefitted by such repairs or removal of obstructions, shall be held to pay their proportionable parts of the expenses thereof; as well those who do not, as those who do cause such repairs to be made or obstruction removed; to be ascertained and determined by the Selectmen as aforesaid, saving an appeal as aforesaid. And each person so held to pay his or her part shall have notice thereof of the sum, and to whom to be paid; and if such person shall not pay the same, within ten days after such notice, to the person appointed by the Selectmen to receive it, he or she shall be held to pay the person, so appointed, double the sum mentioned in such certificate, with all costs arising upon such neglect; and such person is hereby empowered to bring an action or actions for the same accordingly; *Provided always*, That the person or persons who shall have occasion to open any common shore or main drain, in order to clear and repair the same, shall, seven days at least before they begin to open the same, notify all persons interested therein, by advertising in such manner as the Selectmen may direct, that they may (if they think proper) object thereto, and lay their objections in person, or writing, before the Selectmen: and if the Selectmen, or the major part of them, shall judge the objections reasonable, then the person or persons making the same, shall not be held to pay any part of such expenses; but if they do not make their objections as aforesaid to the Selectmen within three days after being so notified, or if they shall deem the objections not to be sufficient, then they shall, under their hands, give liberty to the persons applying to proceed to open such

[\*529]

Expense of opening a common shore, how to be apportioned and defrayed.

[Ib. § 3.]

Proceedings when any person wishes to open a common shore to clear it.



CH. 122. common shore or main drain and clean and repair the same, and all interested therein shall pay their proportions as is provided in this act: *Provided also*, That nothing in this act shall be understood or construed to effect or make void any covenants or agreements already made, or that may hereafter be made, among the proprietors of such drains or common shores. [Approved February 28, 1821.]

Proviso as to the validity of previous covenants, &c. among proprietors.

[\*530]

## Chapter 122.\*

AN ACT ascertaining what shall constitute the legal settlement; and providing for the Relief and Support, Employment and Removal of the Poor (a).

Repeal of former laws.

[Mass. Stat. Feb. 11, 1794, § 1.]

Settlement gained by force of them confirmed.

Modes of gaining settlement.

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That all laws heretofore made, enacting and ascertaining what shall constitute a legal settlement of any person, in any town within this State, so as to subject and oblige such town to support such person, in case of his becoming poor and standing in need of relief, so far as they relate to the manner of gaining a settlement in future, be and they hereby are repealed; but all settlements already gained by force of said laws, or otherwise, shall remain, until lost by gaining others in some of the ways hereafter mentioned.

SECT. 2. *Be it further enacted (b)*, That legal settlements in any town in this State shall be hereafter gained, so

(a) 1. This act does not require plantations to relieve and support their poor. *Blakesburgh vs. Jefferson*, 7 Glf. 125.

2. Though plantations may [see onward, § 23, of the above chapter] raise money for the support of the poor, they are not obliged so to do. Nor have their Assessors any general authority to bind the plantation by their contract for the support of the poor, beyond the amount of the money raised for that purpose. *Means vs. Pl. of Blakesburgh*, 7 Glf. 132.

3. It was not intended by the Legislature of Maine, at the time they revised the poor laws of Massachusetts, that any paupers should be supported by the State. *Sanford vs. Hollis*, 2 Glf. 197; appendix, 3 Glf. 489.

(b) § 2 relates as well to persons who previously to its enactment had settlements in this State, as to those who had none. *Green vs. Buckfield*, 3 Glf. 136.



as to subject and oblige such town to relieve and support the persons gaining the same, in case they become poor and stand in need of relief, by the ways and means following and not otherwise, namely : *First*, A married (c) woman shall always follow and have the settlement of her husband, if he have any within this State, otherwise her own at the time of marriage, if she then had any, shall not be lost or suspended by the marriage. *Second*, Legitimate children shall follow and have the settlement of their father (d), if he shall have any within this State, until they gain a settlement of their own ; but if he shall have none, they shall in like manner follow and have

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[Ib. § 2.]

Married woman.

Legitimate children.

(c) 1. A wife does not lose her settlement, derived from her husband, by means of a divorce, except from a cause which shews the marriage to have been void. *Dalton vs. Bernardston*, 9 Mass. 201.

2. A marriage unlawful and void, as where the first husband was living, conveys no settlement to the wife; either by derivation from the second husband, or by dwelling and having her home in his house, at the time of passing this statute. *Pittston vs. Wiscasset*, 4 Glf. 293.

3. A wife cannot gain a settlement separate from her husband. *Hallowell vs. Gardiner*, 3 Mass. 93.

(d) 1. A minor emancipated from his parents is capable of gaining a settlement of his own under this statute. *Lubec vs. Eastport*, 3 Glf. 220. The emancipation of a child is never to be presumed, but must always be proved. *Sumner vs. Sebec*, 3 Glf. 223. See onward, 6; also, note f, 2.

2. Where an alien who had married a woman in this State, subsequently abandoned the country, without any intention of returning; leaving his wife and infant son here; but afterwards sent for them and continued for seventeen years to express affection for his son, and a strong desire to have him come and reside with him;—it was held, that the son was not emancipated by such abandonment, and so was not capable of acquiring or receiving a settlement in his own right, while a minor. *Pittston vs. Wiscasset*, 4 Glf. 293.

3. The settlement of a person *non compos*, though of full age, will follow that of his father with whom he resides. *Wiscasset vs. Waldoborough*, 3 Glf. 388. See *Springfield vs. Wilbraham*, 4 Mass. 493; and note i.

4. A legitimate child, being a minor, and having a settlement derived from the father at the time of his death, does not follow any new settlement afterwards acquired by the mother. *Fairfield vs. Canaan*, 7 Glf. 90. See onward, note e.

5. Seven years absence of a minor from the parent's house, without evidence of an intention not to return, does not change his domicile. *Parsonsfeld vs. Kennebunkport*, 4 Glf. 47.

6. A minor cannot gain a settlement distinct from the father. *Hallowell vs. Gardiner*, 1 Glf. 93. See ante, 1, of this note.



## CH. 122.

Illegitimate  
children.

Admitted by  
town.

[\*531]  
Incorporation  
of plantations,  
to include all  
then dwelling  
therein.

the settlement of their mother (e), if she shall have any. *Third*, Illegitimate (f) children shall follow and have the settlement of their mother at the time of their birth, if any she shall then have within the State, but neither legitimate or illegitimate children shall gain a settlement by birth in the places where they may be born, if neither of their parents shall then have any settlement there. *Fourth*, Any person that shall be admitted an inhabitant by any town at any legal meeting, in the warrant for which an article shall be inserted for that purpose, shall thereby gain a legal settlement therein. *Fifth*, All persons dwelling and having their homes\* in any unincorporated place, at the time when the same shall be incorporated (g) into a town, shall thereby gain a legal settlement

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(e) Minor children follow the settlement which their mother acquires by a second marriage. *Parsonsfeld vs. Kennebunkport*, 4 Glf. 47; *Plymouth vs. Freetown*, 1 Pick. 197.

(f) 1. An illegitimate child does not gain a new derivative settlement under the mother; but retains that which the mother had at the time of the birth. *Sidney vs. Winthrop*, 5 Glf. 123.

2. An illegitimate *non compos* child of a *non compos* mother, is considered as emancipated, for all the purposes of this act. *Ib.*

3. Illegitimate children, under age, living with their mother on the 21st day of March, 1821, do not follow a new settlement acquired by her by residence on that day in some town in this State; but retain the settlement which she had at their birth. *Biddeford vs. Saco*, 7 Glf. 270.

(g) 1. A slave, resident out of his master's family, in a plantation, at the time of its incorporation, gained no settlement by such incorporation. Nor can the wife, or minor children of such slave, in such case gain a settlement in their own right. *Hallowell vs. Gardiner*, 1 Glf. 98.

2. The clause, "*all persons*," in the above provision, must be understood with such limitations as the Legislature must have intended, and to embrace only those persons who are legally capable of gaining a settlement in any other mode. *Ib.*

3. The incorporation of a town fixes the settlement of all persons having their legal home within the territory incorporated; whether they be actually resident thereon at the time of the incorporation, or not. *St. George vs. Deer Isle*, 3 Glf. 390. If at the time of the incorporation of a town, a person having a legal home, there, be resident in another town, at service, with the intention of returning at some future day, which intention was afterwards abandoned; such subsequent abandonment of the purpose of returning, does not affect the question of settlement. *Ib.*



therein. *Sixth*, Upon division (*h*) of towns, every person having a legal settlement therein, but being removed therefrom at the time of such division and not having gained a legal settlement elsewhere, shall have his legal settlement in that town wherein his former dwelling place or home shall happen to fall upon such division ; and when any new town shall be incorporated, composed of a part of one or more old incorporated towns, all persons legally settled in the town or towns of which such new town is so composed, and who shall actually dwell and have their homes within the bounds of such new town at the time of its incorporation shall thereby gain legal settlements in such new town. *Seventh*, Any minor who shall serve an apprenticeship to any lawful trade for the space of four years in any town, and actually set up the same therein within one year after the expiration of said term, being then twenty-one years old, shall thereby gain a settlement in such town. Any (*i*) person of the age of twenty-one years, who shall hereafter reside in any town within this State for the space of five (*j*) years together, and shall not during that

CH. 122.

Division of  
towns.

Apprentice-  
ship.

Residence of  
five years to-  
gether without  
receiving sup-  
port.

(*h*) The annexation of part of one town to an adjoining town, has the same effect as the incorporation of a new town, so far as regards the legal settlement of the persons resident on the territory thus annexed. *Hallowell vs. Bowdoinham*, 1 *Gl.* 129. But such annexation does not transfer the settlement of any persons except those who *actually dwell and have their homes upon the territory set off*, at the time of its separation. *Ib.* See *Fitchburg vs. Westminster*, 1 *Pick.* 144; *Sutton vs. Dana*, 4 *Pick.* 117.

(*i*) 1. An idiot, or person *non compos*, is capable of gaining a settlement under this statute in any mode not requiring any act of volition of his own. *Lubec vs. Eastport*, 8 *Gl.* 220. See ante, note *d*, 3, and *f*, 2.

2. An alien is capable of acquiring a settlement under this statute. *Knox vs. Waldoborough*, 8 *Gl.* 455.

3. The domicile of a fisherman, who usually lived in his boat in the summer, was holden to be in the place to which he most usually resorted in the winter for board. *Boothbay vs. Wiscasset*, 8 *Gl.* 354.

(*j*) 1. Being taxed in any town for five successive years, does not gain a settlement, if the party during that period has left the town with an intention of never returning; though such intention was changed, and he did in fact return. *Westbrook vs. Bowdoinham*, 7 *Gl.* 363. See ante *g*, 3.

2. The assessment of taxes for five successive years, on a person afterwards a pauper, does not estop the town, in a question of settlement, from showing that during part of that period his domicile was in another town. *Ib.*

3. *Athol vs. Watertown*, 7 *Pick.* 42.



## CH. 122.

Residence at the time of passing this law, not having been supplied as a pauper for 1 year preceding.

term receive directly or indirectly, any supplies or support as a pauper from any town, shall thereby gain a settlement in such town. Any person resident in any town at the date of the passage of this act (*k*), who have not within one year previous to that date received support or supplies from some town (*l*) as a pauper, shall be deemed to have a settlement in

(*k*) 1. A residence at the time mentioned in § 2, for a temporary purpose, does not fix the settlement. *Hampden vs. Fairfield*, 3 *Gl*f. 436. See ante, note *f*, 3.

2. So an absence of five years, to such temporary employment, without evidence of intention to change the domicile, does not change it. *Knox vs. Waldo*borough, 3 *Gl*f. 455; *Parsonsfield vs. Kennebunkport*, 4 *Gl*f. 47.

3. In a question of domicile the declarations of the party whose home is in controversy, made at the time of his going or returning, may be received as evidence of his intentions. *Gorham vs. Canton*, 5 *Gl*f. 266. So evidence of the party's conduct afterwards, as well as before, may be received to ascertain his intention on a particular day. *Richmond vs. Vassalborough*, 5 *Gl*f. 396. The forming an intention to remove, unless such intention is carried into effect, will not affect the domicile. *Hallowell vs. Saco*, 5 *Gl*f. 143. See ante, note *j*, 1.

4. Where a husband had been absent at sea more than 16 years prior to the passage of this act, without having been heard from, except a rumor that he was impressed on board a British vessel of war; this was held to afford legal ground for the presumption that he was dead, so that the wife was capable of acquiring a new settlement for herself by dwelling on that day in another town. *Biddeford vs. Saco*, 7 *Gl*f. 270.

(*l*) 1. Supplies furnished by order of one of a board of overseers, acting under a parol agreement with the rest of the board relative to the general manner of executing their office, are supplies furnished "by some town," within the meaning of this provision. *Windsor vs. China*, 4 *Gl*f. 298.

2. Supplies voluntarily advanced by a third person on an order drawn by the selectmen of a town in favor of a pauper on a different person who refused to accept it, are not supplies "received from some town." *Canaan vs. Bloomfield*, 3 *Gl*f. 173. See note *g*, to § 18, of this chapter.

3. Supplies cannot be considered as so furnished, unless furnished to himself personally, or to some of his family who reside under his immediate care and protection, and for whose support he is by law responsible. *Green vs. Buckfield*, 3 *Gl*f. 136; *Hallowell vs. Saco*, 5 *Gl*f. 143. But supplies furnished to a woman as a pauper, without the knowledge of her husband, she living apart from him, are not supplies received by him. *Dixmont vs. Biddeford*, 3 *Gl*f. 205.

4. Where a son having received a conveyance of all his father's property, gave a bond to the town, conditioned to support him and another son during life; this was held not to be "supplies or support indirectly received from



the town where he then dwells and has his home (*m*). And every legal settlement, when gained, shall continue till lost or defeated by gaining a new one ; and upon gaining such new settlement, all former settlements shall be defeated and lost.

CH. 122.

Settlement  
when gained to  
continue, &c.

SECT. 3. *Be it further enacted*, That every town within this State shall be holden to relieve and support all poor and indigent persons, lawfully settled therein, whenever they shall stand in need thereof ; and may vote and raise monies therefor, and for their employment, in the same way that monies for other town charges are voted and raised : and may also at their annual meetings, choose any number, not exceeding twelve suitable persons, dwelling therein to be Overseers\* of their poor ; and where such are not specially chosen, the Selectmen shall be Overseers of the poor.

Towns to support paupers.  
[Mass. Stat. Feb. 26, 1794, § 1.]

May raise monies therefor,

and choose overseers.

[\*532]

SECT. 4. *Be it further enacted*, That said Overseers shall have the care and oversight of all such poor and indigent persons, so settled in their respective towns, and shall see that they are suitably relieved, supported and employed, either in the work house or other tenements belonging to such towns, or in such other way and manner as they at any legal meeting shall direct ; or otherwise at the discretion of said Overseers, at the cost of such town.

Overseers to have the care of the poor, and their duty towards them.

[Ib. § 2.]

SECT. 5. *Provided always : Be it further enacted*, That the kindred of any such poor person, if any he shall have in the line or degree of father or grandfather, mother, (*n*) or grand moth-

Certain kindred of paupers liable to support them.

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some town as a pauper," so as to prevent the father, and with him the other son, from gaining a settlement by residence under this statute. *Wiscasset vs. Waldoborough*, 3 Glf. 388.

(*m*) By the words "dwells and has his home," the Legislature meant to designate some permanent abode, or residence, with an intention to remain, or at least without any intention of removing. *Turner vs. Buckfield*, 3 Glf. 229.

(*n*) 1. A mother cannot be compelled to support a daughter, who has an estate of her own adequate to that support. *Whipple vs. Dow & ux.* 2 Mass. 419. But the father is bound to the minor child's support if he is of ability to support her, although such minor has property of her own.—*Dawes vs. Howard & al.* 4 Mass. 97.

2. The kindred of a pauper cannot be called upon to contribute to his support, but by the overseers of the town, where he has his legal settlement, or by some other of his kindred. *Salem vs. Andover*, 3 Mass. 436.



## CH. 122.

[Ib. § 3.]

Mode of proceeding to compel such support, by complaint in the Court of Com. Pleas.

Court may further assess a weekly sum to be contributed by such kindred:

[\*333]

and with which of them the pauper may reside.

er, children or grand children, by consanguinity, living within this State, of sufficient ability, shall be holden to support such pauper in proportion to such ability. And the Circuit Court of Common Pleas, in the county where any one of such kindred to be charged shall reside, upon complaint made by any town or kindred who shall have been at any expense for the relief and support of any such pauper ; which complaint being filed in the Clerk's office of such Court and summons thereon issued, directed to and served by any proper officer to serve original summons, and in the manner they are by law to be served, fourteen days before the sitting of such Court, shall be sufficient to hold the persons summoned to answer thereto ; may on due hearing, either upon the appearance or default of the kindred so summoned, assess and apportion such sum as they shall judge (o) reasonable therefor, upon such of said kindred as they shall judge of sufficient ability, and according thereto, to the time of such assessment, with costs ; and may enforce payment thereof by warrant of distress : *Provided*, Such assessment shall not extend to any expense for any relief afforded more than six months previous to the filing of such complaint. And may further assess and apportion upon them such weekly sum for the future as they shall judge sufficient for the support of such pauper, to be paid quarterly till further order of Court, and upon application from time to time of the town or kindred to whom the same shall have been ordered to be paid, the Clerk of the said Court shall issue, and\* may renew a warrant of distress for the arrears of any preceding quarter. And the Court may further order with whom of such kindred that may desire it, such pauper may live and be relieved, and for such time with one, and such with another, as they shall

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3. The only remedy for a town, other than that wherein he is settled, which has provided for a pauper, is by action against the town where he has his settlement. *Ib.*

4. In such action the declaration must aver the settlement and notice to the town liable within three months from the commencement of the expense. *Ib.*

(o) In such case an appeal does not lie from the judgment of the C. C. Pleas to the S. J. Court. *Nantucket vs. Cotton*, 14 *Mass.* 243 ; *Pierce, ex parte*, 5 *Glfc.* 324.



judge proper, having regard to the comfort of the pauper as well as the convenience of the kindred. And upon suggestion, other kindred of ability not named in the complaint, may be notified, and the process may be continued, and upon due notice whether they appear or are defaulted, the Court may proceed against them in the same manner as if they had been named in the complaint. But if such complaint be not entered, or be discontinued or withdrawn, or be adjudged groundless, the respondents shall recover costs. And such Court may take further order from time to time in the premises, upon application of any party interested, and may alter such assessment and apportionment as the circumstances may vary.

SECT. 6. *Be it further enacted*, That said Overseers be and they are hereby empowered, from time to time to bind (*p*) out by deed indented or poll, as apprentices, to be instructed and employed in any lawful art, trade, or mystery, or as servants to be employed in any lawful work or labour, any male or female children, whose parents become actually chargeable to their town, also whose parents shall be thought by said Overseers to be unable to maintain them (whether they receive alms or are so chargeable or not,) to any citizen of this State, that is to say male children till they come to the age of twenty-one years; and females till they come to the age of eighteen years, or are married; which binding shall be as valid and effectual in law as if such children had been of the full age of twenty-one years, and had, by a like deed, bound themselves, or their parents had been consenting thereto: Provision to be made in such deed for the instructing of male children, so bound out, to read, write and cypher; and of females to read and write, and for such other instruction, benefit and allowance, either within or at the end of the term, as to the Overseers may seem fit and reasonable.

Overseers may bind out children of paupers as apprentices or servants.

[Ib. § 4.]

Provision to be made in the indentures for instruction of such children.

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(*p*) 1. Where a child is bound as an apprentice, under § 6, to do any work in which his master may see fit to employ him, the indenture is to be understood as meaning any lawful work, and is valid within the statute. *Bewes vs. Tibbets*, 7 Glf. 457.

2. When an apprentice is employed by a third person, without the knowledge or consent of his master; the master is entitled to recover the value of his earnings against the employer, even though the latter did not know that he was an apprentice. *Ib.*



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[\*534]

Overseers to inquire as to treatment of such apprentices.

C. C. Common Pleas may discharge such child from his master in certain cases;

[lb. § 5.]

and he may be bound anew in certain cases.

Overseers may have remedy on indentures.

Proceedings in such cases.

SECT. 7. *Be it further enacted*, That it shall be the duty of said Overseers, to inquire into the usage of children already\* legally bound out, or that may be bound out by force of this act, and to defend them from injuries. And upon complaint by such Overseers, made to the Circuit Court of Common Pleas in the county where their town is, or where the child may be bound, against the master of any such child, for abuse, ill treatment or neglect ; said Court (having duly notified the party complained of) may proceed to hear the complaint, and if the same be supported, and the cause shall be judged (*q*) sufficient, may liberate and discharge such child from his or her master, with costs, for which execution may be awarded ; otherwise the complaint shall be dismissed but without costs, unless it appear groundless and without probable cause ; in which case costs shall be allowed the respondent. And any apprentice or servant, so discharged, or whose master shall decease, may be bound out anew for the remainder of the term, in manner aforesaid. And such Overseers may also have remedy, by action on such deed, against any person liable thereby for recovery of damages for breaches of any of the covenants therein contained, which, when recovered, shall be placed in the town treasury, deducting reasonable charges, and disposed of by the Overseers, at their discretion, for the benefit and relief of such apprentice or servant within the term ; the remainder if any, to be paid to him at the expiration thereof ; and the Court before which such cause shall be tried originally, and on the appeal, may also, upon the plaintiff's request, if they see cause, liberate and discharge such apprentice or servant from his master, if it hath not then been already done in the method before directed by this act. And such apprentice or servant shall have like remedy when their term is expired, for damages for the causes aforesaid, other than such (if any) for which damages may have been recovered as aforesaid, by action upon such deed to be delivered them for that purpose, and on which no endorsement shall be necessary : *Provided*, Such action be commenced within two years after the expi-

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(*q*) No appeal lies from the decision of the C. C. Pleas in such case.—  
*Smith & al vs. Hubbard*, 11 *Mass.* 24.



## CH. 122.

ration of the term ; and where such deed shall have been before put in suit, an attested copy from the proper officer may be used and have the same force as the original. And no action brought by Overseers shall abate by the death of some of them, or by\* their being succeeded in office, pending the action, but it shall proceed in the name of the original plaintiffs or the survivors of them. And in case of elopement, any such apprentice or servant may be apprehended by any Justice of the Peace of the county where he is bound, or where he may be found, upon the complaint of the master, or any other on his behalf, and returned to his master by any person to whom the warrant may be directed ; or may be first sent to the house of correction, at the Justice's discretion. And every person enticing any such apprentice or servant to elope from his master, or harbouring him, knowing him to have eloped, shall be liable to the master's action for all damages sustained thereby. And the Circuit Court of Common Pleas, either in the county where the Overseers binding, or the master of any apprentice or servant bound, live, may also upon complaint of such master, for gross misbehaviour, discharge such apprentice or servant from his apprenticeship or service, after due notice to such Overseers and hearing thereupon.

SECT. 8. *Be it further enacted*, That said Overseers shall have power to set to work, or bind out to service by deed, as aforesaid, for a term not exceeding one whole year at a time, all such persons residing and lawfully settled in their respective towns, or who have no such settlement within this State, married or unmarried, upwards of twenty-one years of age, as are able of body, but have no visible means of support, who live idly and exercise no ordinary or daily lawful trade or business to get their living by ; and also all persons who are liable by any law to be sent to the house of correction, upon such terms and conditions as they shall think proper. *Provided always*, That any person thinking him or herself aggrieved by the doings of said Overseers in the premises may apply, by complaint, to the Circuit Court of Common Pleas in the county where they are bound, or where the Overseers who bound them dwell, for relief ; which Court, after due notice to the Overseers and to their masters, shall

Action not to abate by death of some of the overseers, &c. &c.

[\*535]

Apprentice eloping may be arrested and returned.

Persons enticing away such servants liable to damages.


Court may also discharge such apprentice, on complaint of master.

Overseers may bind out paupers in certain cases.

[Ib. § 6.]

Persons aggrieved by doings of overseers herein, may complain to C. C. Common Pleas. Proceedings in such Court.



CH. 122.  have power, after due hearing and examination, if they find sufficient cause, to liberate and discharge the party complaining from his or her master, and to release him or her from the care of the Overseers ; otherwise\* to dismiss the complaint, and to give costs to either party or not, as the Court may think reasonable.

[\*536]

Paupers in unincorporated places to be under care of overseers of the adjoining town where such unincorporated place is taxed.

Power and duty of such overseers respecting such paupers.

[Ib. § 7.]

SECT. 9. *Be it further enacted*, That the poor persons standing in need of relief, living without the bounds of any incorporated town, shall be under the care of the Overseers of the poor, appointed in the adjoining town wherein the inhabitants of such unincorporated place are usually taxed : and the same Overseers shall have the like authority to bind out the children of such poor persons, as they are vested with, respecting the children of persons in like circumstances, inhabitants of the town in which they are appointed. And such Overseers may also set to work, or bind out as aforesaid, for a space not exceeding one whole year at a time, all such persons above the age of twenty-one years, married or unmarried, residing in their county, but without the bounds of any town, as are able of body, but have no visible means of support ; or who live idly, using no ordinary daily lawful trade or business to get their living by ; or who are liable by any law to be sent to the house of correction ; and shall receive and apply their earnings (deducting reasonable charges) to the support of them or their families, if any they have, at their discretion ; saving to such persons the like remedy for relief, if they think themselves aggrieved, as is by this act provided for persons set to work, or bound out for like causes by Overseers of towns. And for the prevention of poverty as well as lewdness,

Persons keeping houses of ill fame may be prosecuted on complaint of overseers.

[Ib. § 8.]

Proceedings in such case.

SECT. 10. *Be it further enacted*, That any person who shall be suspected of keeping a house of ill fame, resorted to for the purposes of prostitution or lewdness, may be apprehended by warrant from any Justice of the Peace in the county, upon complaint of the Overseers of the town wherein such house shall be ; and upon conviction of such offence, before such Justice, or before the Circuit Court of Common Pleas, or presentment of the Grand Jury, may be ordered to the house of correction, for a term not exceeding one month ;



and after such conviction, shall not be allowed to keep lodgers or boarders, in any town without the license of the Overseers of the poor thereof. CH. 122.

SECT. 11. *Be it further enacted*, That it shall also be the duty of said Overseers in their respective towns, to provide for\* the immediate comfort and relief of all persons residing or found therein, not belonging thereto, but having lawful settlements in other towns, when they fall into distress and stand in need of immediate relief, and until they shall be removed to the places of their lawful settlements; the expenses whereof, incurred within three months (*r*) next before notice given to the town to be charged, as also of their removal or of their burial (*s*), in case of their decease, may be sued for and recovered (*t*), either in a civil action by the town incur-

Overseers to provide for immediate relief of persons in distress, &c. found in their towns, but settled elsewhere.

[\*537]

[Ib. § 9.] Such expenses, incurred within 3 months before notice, may be recovered of the town where the pauper is legally settled.

(*r*) 1. No action lies by one town against another for such expenses, unless they accrued within the three months previous to notice. *Bath vs. Freeport*, 5 Mass. 325. But whether expenses of burial are barred by such want of notice, is doubted. *Ib.*

2. The charge for expense of trouble of overseers in such case, in providing for the abode and support of a pauper, was adjudged not to be legal. *Conway vs. Deerfield*, 11 Mass. 383.

(*s*) In an action against a town for expenses incurred in the support and burial of a pauper, the defendants are barred from contesting the settlement of the pauper, if the overseers have neglected, for two months after notice and request, to remove him, and no objection has been made to such request. *Topsham vs. Harpswell*, 1 Mass. 518. See above, *r*, 1.

(*t*) 1. A town is not liable to an action by another town, in the case provided in § 11, until the expiration of two months after notice given [see § 17.] *Belmont vs. Pittston*, 3 Glf. 453.

2. To entitle a town to recover in such case, it is not necessary that the pauper be actually resident in the town at the time of giving notice to the town in which he has a legal settlement; it is sufficient that he is then supported at the expense of the town so giving notice. *Marlborough vs. Rutland*, 11 Mass. 433.

3. In a prosecution against a town for the support of a person alleged to be a pauper, it was held competent to the defendants to prove his ability to maintain himself in case the question of settlement be still open. *Freeport vs. Edgacumbe*, 1 Mass. 459. In *Paris vs. Hiram*, 12 Mass. 267, the court upon a similar question said, "Perhaps this would be a question only between him [the pauper] and the place of his proper settlement, in an action against him for money paid to his use, if it should turn out that he was not in fact a pauper; or at any rate the town, which is liable for his support as a pauper, may avail itself of his labor in the manner pointed out by stat-



## CH. 122.

Provided suit be commenced within 2 years after action accrues. Settlement of pauper not to be contested, in case.

Recovery in such action to be a bar against contesting the settlement in a subsequent action.

ring the same, against the town wherein such persons had such settlements, or in the method by complaint, hereafter prescribed in and by this act: *Provided*, Such action or complaint for damages be commenced or preferred within two (u) years after the cause of action arose, but not otherwise. And in such civil action the settlement of the pauper shall not be contested by the defendants, if it hath been then adjudged to be in their town upon such process as is hereinafter prescribed; otherwise it may be: and a recovery in such action shall bar the town against which the same shall be had, from disputing the settlement of such pauper in such town, with the town so recovering, in any future action or process, brought and prosecuted for the support or removal of such pauper.

SECT. 12. *Be it further enacted*, That the Overseers of

ute [§ 6, of the above ch.] But the town where he happens to be, have only to inquire whether he is in actual distress, and if he is, such town is obliged to relieve him. If the distress is of his own procuring, and may be removed by his own exertions, and this is known to the overseers of the town who provide for him, a question may arise on the right of recovery." See onward, note g, § 18.

(u) 1. Such action cannot be maintained if the expenses arise more than two years before the commencement of the action, although they arose within three months next prior to the notice given. *Hallowell vs. Harwich*, 14 Mass. 184; see below, 5. The two years must be computed from the delivery of the notice, and not from its date. *Uxbridge vs. Seekonk*, 10 Pick. 150.

2. But notwithstanding the above limitation, an action will lie against a town after two years, upon a verbal express promise of the overseers to pay the expenses incurred in supporting a pauper legally chargeable to such town; such promise being barred only by the general statute of limitations. *Belfast vs. Leominster*, 1 Pick. 128.

3. The separation of Maine from Massachusetts was held not to affect the rights of a town in Maine, to which such promise was made before the separation. *Ib.*

4. Overseers have authority to bind their town by such a promise. *Ib.*

5. In *Hallowell vs. Harwich*, 14 Mass. 186, it was held that, in a second action between the same towns, for the continued support of the same pauper, a second notice of the expenses incurred was essential to a recovery. See also, onward, note c, 5, to § 17. In *Newton vs. Randolph*, 16 Mass. 426, it was held that a new notice given by one town, to another, pending an action for the support of a pauper, or after its final decision, though unanswered by the latter town, would not operate as an estoppel of the latter town to deny the settlement of the pauper. See *Paris vs. Hiram*, 12 Mass. 267.



the poor of any town, in which there is a county gaol, are hereby authorized and directed, at their discretion, by their order in writing, to set to work, under their own direction, or the direction of any other suitable person, any debtor committed to prison upon mesne process or execution, and actually chargeable to any (v) town or district in this State for his support: And the order of said Overseers shall remain in force, until they shall revoke the same, or such prisoner shall provide for himself: *Provided however*, That no prisoner shall be required to labour more than is necessary to pay the expense of his support. And no prisoner shall be chargeable to any town as a pauper, while such order of the Overseers respecting him shall remain in force, except for the deficiency of his earnings to pay the expense of his support.

SECT. 13. *Provided nevertheless: Be it further enacted*, That every town which shall be liable for, and shall have paid any\* of the charges of maintaining in prison, any person as a pauper, hereafter committed on mesne process or execution, in any civil action, may recover the same in an action at law against the creditor, at whose suit such debtor shall have been committed, and for the time he shall continue so imprisoned, at the suit of such creditor, at the rate of one dollar and twenty-five cents for the support of such debtor, per week. *Provided however*, That said creditor may at any time, discharge his debtor, committed as aforesaid from prison, and such discharge shall not operate to release the debtor from the debt and costs on which he was committed; but such debt and costs, together with all sums which the creditor may have paid for the support of the debtor, in manner as herein before provided, shall be and remain a legal claim against the goods and estate of the debtor; his or her body being forever thereafter exempted from arrest therefor: *Provided also*, That no part of this section shall apply to any commitment for debts contracted, or for any cause of action which accrued on or previous to the fourteenth day of March eighteen hundred and twenty.

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Overseers of towns containing a gaol, may by their order, set to work any prisoner for debt chargeable to any town in the State. [Mass. Stat. Feb. 24, 1818, § 8.] *Provided*, such prisoner shall not be required to labour more than is necessary for his own support.

Towns supporting poor prisoners, may recover the expense, of the creditor who committed them.

[\*538]

[Mass. Stat. Feb. 5, 1820, § 2 & 4.]

Creditor in such cases may discharge debtor's body without prejudice to his demand against his property.

No part of this section to apply to debts contracted before March 14, 1820.

(v) Inhabitants of a town in which gaols are situated, are bound to provide for poor prisoners committed on execution, though they have a legal settlement elsewhere. *Doggett vs. Dedham*, 2 Mass. 564. See onward, notes to § 17 and 18; also, § 18 of this chapter.



CH. 122.

[lb. § 3.]

Persons actually chargeable to a town may be removed to place of their legal settlement.

Mode of proceeding.

[Mass. Stat. Feb. 26, 1794, § 10.]

Form of complaint.  
[\*539]

Form of summons on such complaint.

SECT. 14. *Be it further enacted*, That the keeper of the prison shall be entitled to receive at and after the rate of one dollar and twenty-five cents per week, and no more, for the support of each debtor being a pauper in close confinement.

SECT. 15. *Be it further enacted*, That all persons actually chargeable, or who, through age or infirmity, idleness or dissoluteness, are likely to become chargeable to the places wherein they are found, but in which they have no lawful settlement, may be removed to the places of their lawful settlements, if they have any within the State. And in order to effect such removal, (and also to recover the expense incurred for the relief of such persons, if said Overseers choose that mode, in preference to a civil action,) said Overseers may apply, by complaint (*w*) to any Justice of the Peace in their county, not an inhabitant of their town, which complaint may be in substance as follows :

To ——— a Justice of the Peace, in and for the county of ———. The town of ——— in the said county, by the subscribers, Overseers of their poor, complain and show that ——— now\* resident in said town is poor, and become chargeable (or is likely to become chargeable) to said town; and that his lawful settlement is in ——— in the county of ———. Wherefore your complainants pray that after a due course of proceedings had, the lawful settlement of said ——— may be adjudged to be in said town of ———, and that he may be removed thither by warrant accordingly. Your complainants further pray judgment for damages, for expenses incurred on account of said ———, an account whereof is annexed; and for such as may accrue until the time of judgment, and for costs. Dated at said ——— the ——— day of ——— A D 182 .  
A B &c. Overseers.

Upon which complaint such Justice shall make out and annex thereto a summons, directed to the Sheriff, or his deputy, of the county wherein the town to be summoned is, in substance as follows :

SEAL. — ss. To the Sheriff of the county of ———, or his deputy, Greeting. In the name of the State of Maine, you are hereby required to summon the town of ——— in said county of ——— to appear, if they see fit before me the subscriber, a Justice of the Peace in and for said county of ———, on the ——— day of ——— at ——— of the clock in the ——— noon, to shew cause, if any they have, why the prayer of the above written complaint should not be granted; by leaving an attested copy thereof, and of this summons, with the Overseers of the said town of ——— or some one of them, thirty days before said ——— day of ———: and

(*w*) In the complaint, and also in an adjudication for the removal of a pauper under the provisions of this section, it is required to state the cause of the likelihood of his becoming chargeable. *Walpole vs. W. Cambridge*, 8 *Mass.* 276.



make return hereof, and of your doings herein, unto me, the said Justice, on or before the said ——— day of ———. Hereof fail not. Given under my hand and seal the ——— day of ——— in the year of our Lord ———. T P.

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And such officer shall serve and return the same, his being an inhabitant of the town to be summoned notwithstanding, for the same fees as for other writs of summons. And such Justice shall summon the party (x) to be removed, and other witnesses, and may, if he see cause, compel the appearance of the former by warrant, to be examined; and shall hear his objections to such removal, and may, for good cause, continue the process once, not exceeding three months; and\* after due examination and hearing, whether the town summoned appears or not, shall proceed to give judgment for or against the complainants, and make a record thereof in substance as follows:

Proceedings on such complaint.

[\*540]

—— ss. At a Court held before me —— Esq a Justice of the Peace in and for the county of ——, at —— in said county, on the —— day of —— in the year of our Lord one thousand eight hundred and ——. The town of —— in the county of —— complainants against the town of —— in the county of ——; shewing that —— now resident in said town of ——, is poor —— and become chargeable, to that town (or is likely to become chargeable, as the fact may be) and that said town of —— is the place of his lawful settlement, and praying it may be so adjudged, and that he may be removed thither: (and for damages for expenses incurred on account of such pauper, or that may be incurred, and for costs:) The parties appear (or the complainants appear) but the said town of ——, although solemnly called, doth not appear, but makes default; (as the case may be.) And after due examination and hearing, and on due consideration of the premises had, I do adjudge the same to be true; and I do also adjudge that the lawful settlement of the said —— is in the town of ——, and that he be removed thither, and that the complainants recover costs (or that the complainants recover the sum of ——, damages for expenses incurred to this time for the support of said —— as the case may require) [or if in the favour of the town complained of, say,] I adjudge that the said —— is not likely to become chargeable to said town of ——, or that the lawful settlement of said —— is not in said town of ——; and that said town of —— recover costs. Recorded by me.

Form of record by Justice.


—— Justice of the Peace.

No costs, however, to be awarded for such town if defaulted; but if the complaint be not entered, or be discontinued, or not prosecuted, the town complained of appearing, and praying therefor, shall recover costs. And upon judg-

Justice may issue his warrant of removal;

(x) It is error in the proceedings before a Justice of the Peace, or on appeal before the Court of Common Pleas, for the removal of a pauper, if the pauper be not summoned or present; but the pauper only can avail himself of such error, and not either of the principal parties. *Shirley vs. Lunenburg*, 11 Mass. 379.



CH. 122.  ment of removal, such Justice may issue his warrant of removal directed to, and to be executed by any Constable of the town from whence the person is to be removed, and to any particular person by name in the following form :

[\*541] (SEAL.\*) \_\_\_\_\_ ss. To any Constable of the town of \_\_\_\_\_ in the county of \_\_\_\_\_, or to \_\_\_\_\_ Greeting.

form thereof. Whereas, at a Court held on \_\_\_\_\_ before me \_\_\_\_\_, Esquire, a Justice of the Peace in and for the county of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, it was adjudged by me the said Justice, that \_\_\_\_\_ now resident in said town of \_\_\_\_\_, is chargeable; (or likely to become chargeable, as the case may be) thereto; that his lawful settlement is in the town of \_\_\_\_\_ in the county of \_\_\_\_\_, and that he be removed thither. I do therefore, in the name of the State of Maine, hereby authorize and require you forthwith to take, remove and convey, by land or water, as may be most convenient, the said \_\_\_\_\_ to the said town of \_\_\_\_\_, and him deliver to the Overseers of the Poor thereof, or some one of them; who are hereby required to receive and provide for him as an inhabitant of that town. And of this warrant and of your doings herein, you are to make return to me, as soon as may be after you shall have executed the same. Given under my hand and seal the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_. J P.

Justice may award execution for damages and costs. And such Overseers shall be obliged to receive and provide for such person accordingly ; and said Justice may also award execution for damages and costs ; and may tax in costs a reasonable sum for the expense of removal ; and the execution may be issued to, and may be executed by a proper officer in the county where the town is, against which it issues: *Provided always*, That either party, as also any person who shall be adjudged likely to become chargeable, and ordered to be removed, aggrieved at the judgment of such Justice, may appeal therefrom to the next Circuit Court of Common Pleas to be holden in and for the same county ; and shall produce copies, and enter and prosecute the same as other appeals are. And said Court shall hear and determine the same without a Jury (y), and may award like warrant for removal, and like execution for damages and costs, *mutatis mutandis*; or may on complaint, affirm the judgment of the Justice with additional damages and costs, where the appeal is not prosecuted, and carry such judgment into execution.

Appeal allowed to C. C. Com. Pleas.

Proceedings on such appeal.

[\*542] SECT. 16\*. *Be it further enacted*, That such complaint

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(y) This comes within the exception to that general constitutional provision, of cases where it has heretofore been otherwise practised. *Shirley vs. Lunenburg*, 11 Mass. 385. See Mass. Dec. Rights, § 15, and the Constitution of Maine, art. 1, § 20.



may be originally made by said Overseers, if they see fit, to the Circuit Court of Common Pleas in their county, by filing the same with the Clerk of said Court and procuring a like summons from him, *mutatis mutandis*, and causing the same to be served in time and manner as aforesaid ; as also summons for the party, to be removed (z), and for witnesses ; and such Court, upon such complaint shall proceed to hear, determine, adjudge and grant warrant and execution in the same manner as in cases coming before them by appeal ; and in all their adjudications in the premises, they shall state the facts (a) upon which their judgments are founded ; to the end that error therein, if any, may be corrected by writ of error, in the Supreme Judicial Court ; to which either party aggrieved shall be entitled, if purchased within a year, but not otherwise ; and upon which, if judgment be reversed such judgment shall be given as ought to have been given below ; and the plaintiffs in error shall be restored to all they lost by such erroneous judgment with costs ; but if the judgment be affirmed, the defendants shall recover costs. And said Supreme Judicial Court may send to said Circuit Court of Common Pleas, and require them to state (b) that some material ones were omitted in the statement aforesaid ; or to explain such as do not appear to the Court to be clearly stated ; unless a new statement be agreed to by the parties. And depositions may be used before the Justice, as well as the Circuit Court of Common Pleas, on the trial of such complaints, when taken legally and for legal cause. And when expenses for support of a pauper are prayed for in such complaint, the same complaint may be proceeded upon to judgment, so far as re-

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Complaint may be made originally to C. C. Com. Pleas.

[Ib. § 11.]

Proceedings in said Court on such complaint.

May be corrected on error in Supreme Judicial Court.

Proceedings thereon in Supreme Judicial Court.

Depositions may be used in such cases.

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(z) See note x, to § 15, ante, p. 645.

(a) It is not sufficient for the Common Pleas, upon such an adjudication to file on record the evidence, on which their judgment is founded; they must make a statement of the facts, *Walpole vs. W. Cambridge, 8 Mass. 277.*

(b) In the edition of the Massachusetts Statutes, published by order of the Legislature of that State in the year 1807, a gross mistake occurred in the above §, and the same was transferred to this §, in the statute of this State. Between the words "state" and "that," in the 21st line of the above page, an entire line is omitted, which is as follows:—*other facts, when it shall appear, by suggestion or otherwise.*



CH. 122. spect's his settlement and such expenses ; the decease of the pauper pending the complaint notwithstanding.

Overseers, before legal process, may send written notice to the town supposed to be chargeable, &c. to remove the pauper.

SECT. 17. *Provided always : Be it further enacted*, That said Overseers may in all cases, if they judge it expedient, previous to any such application to any Justice of the Peace, or of the Circuit Court of Common Pleas, to send a written notification (c), stating the facts relating to any person actually become chargeable to their town, to one or more of the

(c) 1. The notice given in such case should state the names of the persons that have become chargeable, or otherwise to describe them so that the overseers notified may certainly know whom to remove. Notice that "*S. and his family*"—or that "*S and several of his children,*" are chargeable, is insufficient. *Bangor vs. Deer Isle*, 1 Glf. 329; *Embden vs. Augusta*, 12 Mass. 307; *Dover vs. Paris*, 5 Glf. 430. Notice by A. to the overseers of B. that "*O. S. widow of G. S. who was an inhabitant of B.*" had become chargeable, &c. was held sufficient; for the meaning of these words is, that the widow was an inhabitant of B. *Uxbridge vs. Seekonk*, 10 Pick. 150. So a notice respecting a pauper whose christian name was *Sally*, calling her *Sarah* or *Sally*, was held sufficient. *Shelburne vs. Rochester*, 1 Pick. 470.

2. If in answering a defective notice no objection be taken to the insufficiency of it, the objection will be considered as waived. *Embden vs. Augusta*, 12 Mass. 307; *Skutesbury vs. Oxford*, 16 Mass. 102; *York vs. Penobscot*, 2 Glf. 1; *Orange vs. Sudbury*, 10 Pick. 22. See *Shelburne vs. Rochester*, 1 Pick. 470.

3. A notification signed by a major part of the overseers, or by a duly authorized agent of the town [*Dalton vs. Hinsdale*, 6 Mass. 501] or by the chairman of the Selectmen, *eo nomine*, is sufficient; and in the latter case it will be presumed that the town did not appoint any overseers of the poor, unless the contrary appear. *Garland vs. Brewer*, 3 Glf. 197. So it has been holden, that notice signed by one overseer by order of the whole, is sufficient within the meaning of the statute. *Westminister vs. Barnardston*, 8 Mass. 104.

4. Notice may properly be sent or delivered to such persons, or any one of them, as appear, by the records of the town notified, to be overseers of their poor, for the current year; though subsequently they may have declined to accept the office. *Gorham vs. Calais*, 4 Glf. 475; *Dalton vs. Hinsdale*, 6 Mass. 501. But a notice sent by mail, is not sufficient. *Groton vs. Lancaster*, 16 Mass. 110.

5. Where a pauper after removal by one town on the notice of another, returned to the latter town, it was holden that the former town was not liable for expenses accruing after such release of the pauper, without a new notice. *Greene vs. Taunton*, 1 Glf. 228. See ante, note t, 3, to § 11. See also, latter clause of the above § 17, and onward, note g, § 18.



Overseers of the place where his settlement is supposed to be,\* and requesting them to remove him, which they shall have power to do by a written order directed to any particular person by name, who is hereby authorized and required to obey the same ; and if such removal is not effected, nor objected to by them in writing, after such notice, to be delivered in writing, within two months after such notice to the Overseers of the town requesting such removal, or to some one of them (d); then such Overseers may remove such person by land or water as is most convenient, by a written order directed to, and to be served by any persons who shall be particularly mentioned in such order, to said place of his supposed settlement, the Overseers whereof shall be obliged to receive and provide for him ; and their town shall be liable for the expenses of his support and removal ; to be recovered by action as aforesaid, by the town incurring the same ; and shall be barred (e) from contesting the question of settlement with the plaintiffs in such an action. And if any person lawfully removed agreeably to this act, to the place of his lawful settlement within this State, shall voluntarily return to the town from which he was removed, without their consent, he shall be deemed a vagabond ; and upon conviction thereof, before any Justice of the Peace in the same county, may be sent to the house of correction.

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[\*543]

[Ib. § 12.]

If no removal, nor objection be made within two months, overseers may remove pauper to his place of settlement.

And such place shall be liable to pay such expense and be barred from contesting settlement of pauper.

Pauper returning, after such removal, to be punished as a vagabond.

(d) In the computation of the two months, the day of giving the notice is to be excluded. *Windsor vs. China*, 4 Glf. 298. Ante, c, 4.

(e) 1. This provision does not apply to cases where the settlement can be shown to be in the town giving the notice. *Turner vs. Brunswick*, 5 Glf. 81.

2. If the town of A. has incurred expenses in the support of a pauper supposed to have his settlement in B. and the overseers of A. give notice thereof to the overseers of B. and request his removal; although the notice be not answered nor objected to, and the expenses are paid by the town of B. but the pauper is not removed; in an action by the town of A. for after expenses incurred in the support of the pauper against the town of B. the defendants are not barred from contesting the settlement of the pauper in B. *Leicester vs. Rehoboth*, 4 Mass. 180; see ante, notes, § 11, p. 641.

3. It is no sufficient bar to an action by the town of A. against the town of B. that the plaintiffs had given notice to the town of C. and claimed payment of the same sums; and, such notice not being answered according to the statute, had recovered judgment therefor against the town of C. *Brain-tree vs. Hingham*, 17 Mass. 432.



## CH. 122.

Overseers to support, or bury poor persons found in their towns, having no settlement in this State, or may employ them.  
Expense how paid.

[Ib. § 18.]

Money for licenses on retailers, innholders, &c. to be paid into town treasuries for benefit of the poor.

[\*544]

Such paupers may be sent out of the State,

or employed in work house, &c.

Town liable to pay expense incurred by inhabitant, &c. for the relief of pauper.

SECT. 18. *Be it further enacted (f)*, That said Overseers shall also relieve and support, and in case of their decease, decently bury all poor persons residing or found in their towns, having no lawful settlements within this State, when they stand in need; and may employ them, as other paupers may be, the expense whereof may be recovered of their relations, if they have any, chargeable by law for their support, in manner herein before pointed out, otherwise it shall be paid out of the respective town treasuries; and all monies accruing for licenses granted to retailers, innholders and victuallers, shall be paid into the respective town treasuries, where such licenses are granted for the benefit of the poor of said town; any law to the contrary notwithstanding; and upon complaint of such Overseers any Justice of the Peace in his county may by warrant directed to, and which may be executed by, any Constable of their town, or any particular person by name, cause such pauper to be sent\* and conveyed by land or water to any other State, or to any place beyond sea, where he belongs, if the Justice thinks proper, he may be conveniently removed at the expense of the town; but if he cannot be so removed, he may be sent to and relieved and employed in the house of correction or work house, at the expense of the town; and every town shall be holden to pay any expense which shall be necessarily incurred for the relief of any pauper by any inhabitant (g), not liable by law for his or her support, after notice (h) and

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(f) It is not the intent of § 18, to designate the mode of gaining a settlement; it proceeds on the ground that the persons supplied have no legal settlement in the State. *Sanford vs. Hollis*, 2 Glf. 197. But this section operates as a partial repeal of § 8, ch. 124, and § 1, ch. 127. See *appendix*, 3 Glf. 489.

(g) A pauper, for whose support provision was made in the town of W. in which she had a settlement, went into the adjoining town of N. and there expenses were incurred for her support, although the pauper herself, the person with whom she then resided, and the town, all knew that a place was provided for her in W. to which she was able to walk without any difficulty. Held, that N. could not recover of W. for such expenses. *New Salem vs. Wendell*, 2 Pick. 841. See *ante*, note c, 5, § 17.

(h) 1. Such notice and request need not be in writing, in order to bind a town. *Watson vs. Cambridge*, 15 Mass. 286.

2. An action against a town, by an individual, for the reimbursement of



request made to the Overseers of the said town, and until provision shall be made by them (i). And where any poor person being in any town in this State, and standing in need of assistance for support, and who is notoriously subject to habits of intemperance, it shall be the duty of the Overseers of the poor in such town, to apply by complaint signed by a majority of said Overseers, to any Justice of the Peace in such county, who shall issue a warrant thereon against such person; and after a hearing before such Justice, if he shall adjudge, that such person is notoriously subject to habits of intemperance, he shall order him committed to the house of correction, to be supported at the expense of the town, in which he has a settlement; and when not an inhabitant within the State, at the expense of the county, till discharged by the joint order of the Overseers of the town in which such house of correction is situated, and two Justices of the Peace, *unus quorum*.

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Intemperate pauper may be sent to house of correction, to be maintained at the expense of town where he is settled, or of the county, in case.

[See ch. 297, § 4, vol. 8, p. 137; and ch. 429, vol. 8, p. 271.]

SECT. 19. *Be it further enacted*, That the inhabitants of any town within this State, who have incurred expense for the support of any pauper, whether he was legally chargeable to them by means of his settlement or not, may recover the same against such person, his executors or administrators, in

Towns having supported pauper, &c. may recover against him or his representatives. [Mass. Stat. Feb. 24, 1818, § 5.]

such expense, is not limited to two years after the notice. *Ib.* See ante, note u, 2, p. 642.

3. A surgeon who had performed a difficult operation on a pauper, not resident in the town where he had his settlement, without the application of the overseers of such town, has no right of action therefor against the town. *Miller vs. Somerset*, 14 Mass. 396. In a similar case, the surgeon not having made a demand within three months, it was holden that the town would not have been liable, if the pauper had been an inhabitant of the town. *Kittredge vs. Newbury*, 14 Mass. 448.

4. No action lies for an individual against the town of a pauper's legal settlement, for supplies furnished the pauper, unless the individual be an inhabitant of such town. *Mitchell vs. Cornville*, 12 Mass. 338.

(i) 1. This provision applies to paupers of every description, as well those who are prisoners in gaol, as others. *Cargitt vs. Wiscasset*, 2 Mass. 549; *Doggett vs. Dedham*, *ib.* 564; *Paris vs. Hiram*, 12 Mass. 262. See ante, vol. 1, p. 461, note d.

2. It is applicable to a prisoner confined for not obeying the order of Court for the maintenance of a bastard child. *Sayward vs. Alfred*, 5 Mass. 244.



CH. 122. an action of assumpsit, for money paid, laid out, and expended for his use (j).

On the death of a pauper overseers may take possession of his effects.

[Ib § 6.]

If there be no administration within 30 days such effects may be sold to pay expenses, &c. by overseers.

[\*545]

Overseers may have the same remedy to recover effects withheld, as administrators.

In all actions, &c. by complaint, &c. overseers may appear by themselves or attorney, &c.

SECT. 20. *Be it further enacted*, That upon the death of any pauper, who at the time of his decease shall be actually chargeable to any (k) town within this State, the Overseers of the poor of such town may take into their possession all the personal property belonging to such pauper. And if no administration shall be taken upon the estate of such pauper, within thirty days after his decease, said Overseers may\* sell so much of such property, as may be necessary to repay the expenses incurred for such pauper. And if any part of such property shall be withheld from said Overseers, they shall have the same remedy for the recovery of such property, or the value thereof, that an administrator of the estate of said pauper might have in like case.

SECT. 21. *Be it further enacted*, That in all actions and prosecutions by complaint founded on this act, for or against any town, or against any individual, the Overseers of the poor thereof, or any person, by writing, under their hands, appointed, shall and may appear, prosecute or defend the

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(j) In the case of *Deer Isle vs. Eaton & ux.* 12 Mass 328, decided before the enactment of this provision by Massachusetts, viz. June 1815, it was held that a pauper is not liable to the action of the town, *wherein he is lawfully settled*, for any monies paid on his account in character of a pauper. In the case of *Hanover vs. Turner*, 14 Mass. 227, also decided anterior to the said enactment by Massachusetts, viz. July 1817, it was held, that if the overseers of the poor relieve the wants of the wife, whose husband has a legal settlement in another town, an action at common law lies for the town whose overseers furnished the relief, against the husband, notwithstanding the statute remedy against the town, wherein he is settled. In *Medford vs. Learned*, 16 Mass. 216, it was held, that an action will not lie under § 19 for expenses incurred by a town antecedent to the passage of this act.

(k) 1. Where overseers of the poor, upon the decease of a pauper, take possession of his effects, pursuant to St. 1818, c. 186, § 6, and administration is not taken out within thirty days from his decease, they may sell so much of the property as shall be necessary to repay the expenses incurred for such pauper, notwithstanding the appointment of an administrator before the sale takes place. *Haynes vs. Wells & al.* 6 Pick. 462.

2. In trover by the administrator of a pauper against the overseers, for articles fairly sold by auction pursuant to that statute and purchased by one of the overseers himself, the purchase was held not to be invalid. *Ib.*



same to final judgment and execution, in behalf of such town; and every act or thing required or authorized (l) by them to be done by this act, may be done by them, or the major part of them. CH. 122.  
[Mass. Stat.  
Feb. 26, 1794,  
§ 14.]

SECT. 22. *Be it further enacted*, That if any person shall bring and leave any poor and indigent person in any town in this State, wherein such pauper is not lawfully settled, knowing him to be poor and indigent; he shall forfeit and pay the sum of sixty dollars for every such offence; to be sued for and recovered by, and to the use of such town, by action of debt, in any Court proper to try the same. Penalty for bringing or leaving a pauper in any town where he has no settlement.  
[Ib. § 15.]

SECT. 23. *Be it further enacted (m)*, That the plantations in this State, be and they hereby are, empowered to raise money for the relief and support of the poor therein; to be applied by the Assessors thereof; and all monies accruing for licenses as aforesaid, in plantations, shall be paid into the respective treasuries thereof for this purpose. [Approved March 21, 1821.] Plantations may raise money for support of poor, and receive duty on licenses.

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(l) Overseers are justifiable in advancing money, employing counsel, and rendering assistance in the prosecution of a bastardy process, the complainant being poor, and an inhabitant of their town. *Dennett vs. Nevers & als.* 7 Glf. 299.

(m) 1. In an action under the provisions of § 22, the intent of the defendant is a fact to be found by the jury—and the unlawfulness of the intention is what constitutes the offence. *Inhnts. of Sanford vs. Emery*, 2 Glf. 5. The offence intended to be punished, is the bringing of a poor person into a town with intent to leave him there, a charge and burthen on such town. *Greenfield vs. Cushman*, 16 Mass. 382.

2. An overseer of the poor of one town employed an agent to carry a poor and indigent person to another town on the direct road towards the place to which such poor person was travelling, but the agent carried him to a different town. *Held*, that the overseer might lawfully endeavor to avoid a charge upon his own town by helping such person on his journey; that whether he intended to do this, or to throw the expense of supporting such person on another town, contrary to St. 1794, c. 59, § 15, was a question for the jury; and that his intention being found to be innocent, the deviation from his orders did not subject him to the penalty of that section. *Inhnts. of Deerfield vs. Delano*, 1 Pick. 465.

3. A person having a settlement in Massachusetts proper, but living in the District of Maine at the time of its separation from Massachusetts, does not by the separation acquire a settlement in this State; and the penalty of § 22 is not incurred by bringing such a person, being a pauper, to the place of her settlement in Massachusetts, and leaving her there. *Middleborough vs. Clark*, 2 Pick. 28.



## Ch. 123.

## Chapter 123.

AN ACT to prevent the introduction of Paupers from foreign ports or places.

**BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That when any ship or vessel having any passengers on board, who have no settlement within this State, shall arrive at any port or harbour within the State, the master of such ship or vessel shall, before such passengers come on shore, leave a list of their names\* and places of residence with the Selectmen or Overseers of the poor of the town where such passengers shall arrive. And the master of such ship or vessel shall not land any such persons, without the permission of the Selectmen unless he shall enter into bonds with sufficient sureties, to the satisfaction of said Selectmen, in a sum not exceeding five hundred dollars for each passenger, to indemnify and save harmless such town as well as the State from all manner of charge and expense, which may arise from such passengers, for and during the term of three years ; and if the master of any such ship or vessel, shall land any such passengers, without entering their names and giving bonds as aforesaid, he shall forfeit and pay the sum of two hundred dollars for each passenger so landed, to be recovered by action of debt, by any person who shall sue for the same, one moiety thereof to the use of the State, and the other moiety to the prosecutor : *Provided*, That this act shall not take effect, until the first day of October next, and that nothing in this act shall be construed to extend to the master of any ship or vessel, in any voyage, on which such ship or vessel, may now be employed. [Approved June 27, 1820.]

Master to leave  
the names of  
passengers  
with the over-  
seers,  
[\*546]

and to give  
bond before  
landing them  
to indemnify  
the town.

Penalty of neg-  
lect.

## Chapter 124.

AN ACT for erecting Work Houses for the reception and employment of the Idle and Indigent.

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That when any

Towns may  
erect work  
houses;



town in this State shall see meet to erect or provide a house for the reception, support, and employment of the idle and indigent, such town shall be, and hereby is fully authorized and empowered this to do ; and the towns aforesaid, as well as those who have already erected such houses, are hereby empowered, at their annual meeting, for the choice of town officers, to choose three, five, seven, or more Overseers of the said house ; who shall have the inspection and government thereof, with full power of appointing a master, and needful assistants for the more immediate care and oversight of\* the persons received into or employed in the said house ; which Overseers, once in every month, and at other times as occasion shall require, shall assemble together for the purpose of determining the most eligible method of discharging the duties of their office : and at their stated monthly meetings shall have power to make needful orders and regulations† for such house, which orders shall be binding until the next public meeting of the inhabitants of such town, to whom such orders shall be presented for approbation ; and when by them approved, shall be obligatory, until revoked by the town.

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[Mass. Stat. Jan. 10, 1789, § 1.]

and choose overseers.

Their powers and duties.

[\*547]

[†See ch. 429, vol. 8, p. 271.]

SECT. 2. *Be it further enacted*, That when any number of towns shall agree (at their joint charge, and for their common benefit) to erect or provide a work house for the employment of persons residing in such towns that are indigent or idle ; or to purchase land whereon to erect such house, or for the accommodation thereof, they shall be and hereby are vested with power and authority this to do ; and the ordering and governing the same, making the necessary repairs thereof, appointing a master and other assistants, and the power of removing him or them from their respective offices or trusts for irregular behaviour, incapacity, or for other sufficient cause, shall be vested in Overseers, to be from year to year specially chosen by the several towns, at their annual meeting for the choice of town officers ; each town to choose three, unless all the towns engaged in the undertaking shall agree upon a different number : and in case of the death of an Overseer, or his removal from the town for which he was appointed, the vacancy made thereby may be supplied by such town, at any other public meeting : and if any town concerned shall neg-

Several towns may join in building work house, &c.

Mode of choosing the officers and managing the concerns of such work houses.



CH. 124. lect to choose such Overseers, in such case the person or persons, chosen in the other towns may proceed in all affairs of the said house, any such neglect notwithstanding.

Overseers to  
meet quarterly  
at work houses.

Intermediate  
meetings.

[\*548]

Their powers  
and proceed-  
ings.

May choose a  
moderator and  
clerk.

Overseers may  
make bye-  
laws, pay mas-  
ters, &c. &c.

Compensation  
of master and  
assistants to be  
borne by towns  
concerned.

SECT. 3. *Be it further enacted,* That there shall be stated quarterly meetings of all the Overseers, on the first Tuesday of the months of January, April, July and October, annually, to be held at the work house, in order to inspect the management, and for directing the business thereof; and besides those stated meetings, intermediate ones to be held at the\* work house, may be called by the Overseers of any town concerned; due notice of the time and occasion thereof being given to the rest in such way and manner as shall be agreed upon by the Overseers, at any general stated meeting: and the said Overseers, when duly assembled, may choose a Moderator; and at their first general meeting annually, after their appointment, they shall likewise choose a Clerk, to enter and record all votes and orders that shall be made and passed by the Overseers, who shall be sworn to the faithful discharge of his trust.

SECT. 4. *Be it further enacted,* That the Overseers for the time being at a general quarterly meeting, provided one half, at the least, of the whole number chosen are present, shall have full power and authority to make all reasonable orders and bye-laws, not repugnant to the laws of this State, for the ordering and regulating the said house, and the affairs thereof: which orders and bye-laws shall continue and be in force, until altered, annulled or reversed by them or their successors in office, and may likewise agree with the master or other assistants, and order meet allowance for their care and service: and all other matters of less importance, relating to the said house, may be transacted at any other meeting duly notified, when only one third part of the Overseers are present; subject nevertheless to be altered or reversed at any general stated meeting.

SECT. 5. *Be it further enacted,* That the yearly stipend, or allowance, to the master and assistants, over and above what is provided for by this act, for their care and trouble, together with charge of keeping the house in repair, shall be paid by the several towns concerned, in proportion as they



are taxed to the State, at the time the expense is incurred ; or in such other proportion, as all the towns concerned shall agree upon : And, if any town or towns shall refuse or neglect to advance, or reimburse their respective proportions of such allowance or other charges before mentioned, after they shall have been stated and adjusted by the Overseers, the same may be recovered by such delinquent town or towns, in any Court proper to try the same, by action to be brought by such person or persons, as the Overseers shall in writing appoint for that purpose.

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Payment may be compelled by action.

SECT. 6.\* *Be it further enacted,* That any two or more of the Overseers in any town, already provided with such house, and any two or more of the Overseers in any town that, either by themselves or in conjunction with other towns, shall hereafter erect a work house, be, and they are hereby authorized, empowered, and directed to commit to such house by writing, under the hands of the said Overseers, to be employed and governed, according to the rules and orders of the house, any person or persons, residing in such town that are in this act declared liable to be sent thither : *Provided,* That no greater number of persons belonging to any town, be received into the house, than such town's proportion of the said house to be allotted them, can accommodate, when the receiving them will exclude or incommode such as belong to other towns ; and an order of commitment from two or more Overseers, directed to a Constable of the same town, shall, by such Constable, be obeyed and executed.

[\*549]

Any two overseers may commit to work house, by warrant such persons as are liable to be sent.

No town to send more than its proper share.

SECT. 7. *Be it further enacted,* That the persons who shall be liable to be sent unto, employed and governed in any work house erected or to be erected by one or more towns, in pursuance of this act, are, all poor and indigent persons that are maintained by, or receive alms from, the town ; also all persons able of body to work and not having estate or means otherwise to maintain themselves who refuse or neglect so to do ; live a dissolute, vagrant life, and exercise no ordinary calling or lawful business, sufficient to gain an honest livelihood ; and all such as having some ratable estate, but not sufficient to render them liable to pay any tax for such property equal to two thirds of a poll tax, do neglect the due care

Description of persons liable to be sent to and employed and governed in work houses.



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and improvement thereof; and such as spend their time and property in public houses, to the neglect of their proper business; or by otherwise mis-spending what they earn, to the impoverishment of themselves and their families, are likely to become chargeable to the town or to the State.

Idle or indigent foreigners may be sent to such house and employed there.

[\*550]

Overseers to keep a fair account, to be laid before the Legislature for allowance.

Penalty for towns neglecting to furnish its proportion of furniture, materials, &c.

Towns may furnish more than its proportion of materials and tools in certain cases.

Master to keep distinct account, and be accountable for prime cost, as well as profits.

SECT. 8. *Be it further enacted*, That when any foreigner or other person, not a legal inhabitant of any town within this State, shall become idle or indigent, it shall be the duty of the Overseers of the town in which such person resides, or any two of them to commit such idle or indigent person to the\* work house belonging to the same town, or in which such town is interested; and the person or persons so committed, shall be under the care of the keeper of such house, and be employed, if capable of labour, in the same way and manner as is herein before directed, and shall be subject to the same rules and regulations as others committed to said house. And such Overseers shall keep a fair account of the charge of supporting such idle or indigent person from time to time, and shall exhibit the same once in every year, at the least, to the Legislature, for allowance and payment, deducting therefrom the amount of such person's earnings.

SECT. 9. *Be it further enacted*, That if any town shall refuse or neglect to provide its proportion of the needful furniture for such house, or the materials, implements or other necessary apparatus for carrying on the work there to be performed, according to their agreement, or as shall be directed by the Overseers, such town shall be deprived of the privilege of sending any person thither, until they shall comply with such agreement or direction.

SECT. 10. *Be it further enacted*, That beside the aforesaid proportion of materials and other things to be found by the towns concerned, each town may likewise provide such other materials and tools for work, as the Overseers for such town shall determine, any person by them committed to the said house, can be employed about, more advantageously: and the master of the house shall receive such materials and tools, and keep them separate and apart from those sent from any other town, and shall be accountable to the Overseers of each town concerned, as well for the prime costs, as for all



profits and earnings that shall be made by the labour of those belonging to such town under his care ; and shall keep a register of the names of the persons committed to such work house, and of the towns to which they respectively belong, with the time of their being received into, and discharged therefrom, and of their earnings, that the same may appear to any of the Overseers whenever they shall incline to inspect them : and all controversies between the master or keeper of such house, and the Overseers of any town, touching his accounts, or other his affairs whatever\* respecting the work house, may be determined by the Overseers of the house at a general or quarterly meeting.

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And shall keep a register, &c.

Overseers to settle controversies, &c. respecting master's accounts, &c. [\*551]

SECT. 11. *Be it further enacted*, That no town shall be chargeable for the relief or support of any person committed to the said house, who was not sent thither by the Overseers belonging to such town ; nor shall any person orderly committed to the said house be discharged therefrom, but by the Overseers that made the commitment, or by the Overseers at a general or quarterly meeting, or otherwise by the Circuit Court of Common Pleas in the same county, upon application to them made for that purpose. And every person thus committed if fit and able to work shall be kept diligently employed in labor, during his or her continuance there : and in case the person so committed, shall be idle and not perform such reasonable task or stint as shall be assigned ; or shall be stubborn and disorderly, they shall be punished according to the orders that shall be made for ruling, governing and punishing the persons there committed, not repugnant to the laws of this State.

No town liable to support any one not sent by overseers of such town. How persons may be discharged from said house.

SECT. 12. *Be it further enacted*, That one third part of the profits or earnings of the work done by the persons detained in such house, shall be to the master for, and toward his support, over and above such further annual stipend as the Overseers may allow him : and the prime stock, together with the other two thirds of the profits shall be disposed of by the Overseers of the respective towns, to whom it belongs, either to the master towards his services, or for the support of the families of the persons there detained, if any such they have, or otherwise for the use of such town as occasion shall require.

Profits of labour how divided.



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SECT. 13. *Be it further enacted*, That any work house erected or provided as aforesaid, may be discontinued or applied to any other use whenever the town or towns concerned, shall find their circumstances require it, and shall agree thus to do. [Approved March 15, 1821.]

Towns may  
discontinue  
work houses,  
&c.

[\*552]

Chapter 125.\*

AN ACT for keeping Watches and Wards in towns, and for preventing disorders in streets and public places.

Persons liable  
to watch.

[Mass. Stat.  
Mar. 10, 1797,  
§ 1.]

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That all male persons of the age of eighteen years and upwards, being able of body, or having estate sufficient to hire, shall in their respective towns, be liable to watch and ward, either in their own persons, or by some other sufficient person or persons in their room when duly warned to attend the same in the manner hereinafter mentioned, except all persons who shall live more than two miles from the place where the watch or ward is kept : and except Ministers of the gospel.

Justices and selectmen to have power to establish a watch from 9 o'clock to sunrise,

[Ib. § 2.]

also a ward in day time.

[†See additional act.]


Mode of proceeding and warning watch by constable.

SECT. 2. *Be it further enacted*, That the Justices of the Peace, together with the Selectmen of each town in this State, shall have power from time to time, to direct and order a suitable watch or watches to be kept nightly within such town from and after nine o'clock in the evening until sunrise in the morning ; and also a ward to be kept in the day time and evenings when they shall think the same watch or ward necessary †; and to appoint the number of persons whereof the same shall consist, the place or places wherein they shall be kept, and the hour or hours for keeping the same ; and to give orders in writing accordingly, signed by a major part of such Justices and Selectmen, directed to any Constable or Constables of the town empowering and requiring him or them from time to time, to warn such watch or ward, and to see that all persons, so warned by him, or them, do attend and do their duty in such manner as shall be required ; and in the warning thereof to take care that some



able householders, or other sufficient persons be joined in each watch or ward. And such Constable or Constables shall charge the watch to see that all disturbances and disorders in the night be prevented and suppressed; and to examine all persons whom they shall see walking abroad in the night after ten o'clock, and whom they shall have reason to suspect of any unlawful intention or design of their business abroad at such season and whither they are going;\* and in case they give not reasonable satisfaction therein, then to secure by imprisonment or otherwise, all disorderly and suspicious persons to be safely kept until morning; then to carry them before one of the next Justices of the Peace to be examined and proceeded against, according to the nature of their offences, as is by law directed. And such watchmen shall walk the rounds in and about the streets, wharves, lanes and principal inhabited parts within such town, to prevent any danger by fire, and to see that good order is kept, taking particular observation and inspection of all houses and families of evil fame, and shall strictly observe the charge to be given them as aforesaid. And each Constable when attending watch or ward, shall carry with him the usual badge of his office.

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Duty of watch,  
&c.

[\*553]

SECT. 3. [Repealed. See ch. 434, § 3, vol. 3, p. 278.]

It provided for the organization of a watch in any other manner than is provided in this act, when said Justices and Selectmen deem it expedient; also for laying the expenses thereof upon inhabitants.]

[Ib. § 3.]

SECT. 4. *Be it further enacted*, That whenever a watch shall be so appointed and agreed upon different from a Constable's watch, the number and qualifications of the persons, whereof it shall consist, shall also be agreed upon by the said inhabitants of the town, observing the rule prescribed in the first section of this act; and one sober, discreet, able bodied householder shall be appointed officer of the watch by said Justices and Selectmen, to take the charge and command of such watch, who, as the badge of his office, shall carry a quarter pike with a spire on the top thereof; and every watchman as well in this, as in the Constable's watch, shall carry a staff with a bill fastened thereon, as is usual. And the powers and the duties of the said officer and watchmen shall be\* the same as are before prescribed in the second section of this act, in the case of a Constable's watch.

Towns to  
agree as to the  
qualifications  
of watch.

[Ib. § 4.]

Duty of watch-  
men.

Their power.

[\*554]



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SECT. 5. *Be it further enacted,* That if any person lia-

Penalty for neglecting to watch when warned.

[Ib § 5.]

ble to watch or ward as aforesaid, being duly warned by the officer of the watch or Constable, or by other person appointed by such officer or Constable, shall refuse or neglect to appear and attend his duty in that respect, either by himself or some other sufficient person in his stead, and be thereof convicted before a Justice of the Peace, either by the oath of the Constable, officer or other sufficient testimony on oath, without a just and reasonable excuse to be made and given for the same, he shall forfeit and pay for each offence the sum of one dollar, to the use of the town with costs of prosecution, to be levied by distress and sale of the goods and chattels of such offender, or otherwise be committed to prison until the same shall be paid. And if any Constable or officer of the watch shall neglect or refuse to observe and perform the orders he shall from time to time receive, he shall forfeit and pay to the use of said town, a sum not exceeding ten dollars, to be levied as aforesaid.

Penalty for neglect of duty by constable.

When Justices and selectmen walk by night to inspect, &c. constable and watch to attend them, &c. [Ib. § 6.]

SECT. 6. *Be it further enacted,* That when the said Justices of the Peace and Selectmen shall think fit to walk by night to inspect the order of the town wherein they dwell, such of said Constables and watchmen shall attend them as shall be required to do the same, and obey their lawful commands.

Gaoler's fees for committing, &c. [Ib. § 7.]

SECT. 7. *Be it further enacted,* That the fee to the gaoler for each person taken up in the night, and committed to be secured only till the next day, shall be twenty-five cents and no more.

Penalty for riding with naked scythes, &c. in highways. [Ib. § 7.]

SECT. 8. *Be it further enacted,* That if any person shall ride with a naked scythe, ground and hung in a sneath, on the highways or through any lanes, streets or alleys, the person so offending shall forfeit and pay for each offence two dollars.

Penalty for assembling in night, with images, pageants, &c. [Ib. § 9.]

SECT. 9. *Be it further enacted,* That if any persons to the number of three or more, between sunset and sunrise, being assembled together in any of the streets or lanes in any town, shall have any kind of imagery or pageantry for a public show, although none of the company so assembled, shall\* be armed or disguised, or exact, demand, or ask any money or thing of value, every person being of such compa-



ny shall forfeit and pay the sum of eight dollars, or be imprisoned not exceeding one month.

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SECT. 10. *Be it further enacted*, That if any person or persons shall set fire to any pile of combustible stuff, or be any ways concerned in causing or making a bonfire in any street or lane, or any other part of any town within this State, such bonfire being within ten rods of any house or building, every person so offending, shall, for each offence, forfeit and pay the sum of eight dollars, or be imprisoned not exceeding one month. The several fines in the eighth, ninth and tenth sections of this act, shall be recovered, with costs of prosecution, one moiety of said fines to the use of the town wherein the offence shall be committed; and the other moiety to him or them who shall sue for the same. And all masters are hereby made liable to pay the several fines as aforesaid in this and the two next preceding sections, for the offences of their servants; and all parents for the offences of their children under age and not being servants. [Approved February 24, 1821.]

Penalty for making bonfires, &c. in the street.

[Ib. § 11.]

Fines how recovered.

Parents liable for fines in certain cases.

Additional Act, ch. 434, Vol. 3, p. 277.

## Chapter 126.

AN ACT to diffuse the benefits of Inoculation for the Kine Pock.

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That it shall be the duty of every town, and plantation within this State, wherein no board of health shall be established by law, at their annual meetings for the choice of town officers, to choose, in the manner in which other town officers are by law chosen, three or more suitable persons, whose duty it shall be to superintend the inoculation of the inhabitants of such town, or plantation, with the kine pock.

Each town required to choose superintendants of inoculation,

SECT. 2. *Be it further enacted*, That it shall and may be lawful for the inhabitants of any town, or plantation, at any of their said annual meetings, to provide for the inoculation of

and may provide for inoculation and raise necessa-



**CH. 127.** the inhabitants of such town or plantation with the kine\* poek under the direction and controul of said superintendants, or a board of health, where such board is established; and to raise all necessary sums to defray the expense of such inoculation, or such part thereof as they may deem proper, in the same way and manner that other town charges are by law defrayed. [Approved February 14, 1821.]

[\*556]  
ry funds there-  
for.

## Chapter 127.

AN ACT to prevent the spreading of the Small Pox, and other Contagious Sick-  
ness.

[Mass. Stat.  
June 22, 1797,  
§ 1.]

Selectmen to  
make provis-  
ion for sick  
persons arriv-  
ing from in-  
fected places  
and removing  
them to safe  
places.

**SECT. 1.** *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That for the better preventing the spreading of infection, when it shall happen that any person or persons coming from abroad, or belonging to any town or place within this State, shall be visited, or shall lately before have been visited with the plague, small pox, pestilential or malignant fever, or other contagious sickness, the infection whereof may probably be communicated to others; the Selectmen of the town where such person or persons may arrive or be, are hereby empowered to take care and make effectual provision in the best way they can for the preservation of the inhabitants, by removing such sick or infected person or persons, and placing him or them in a separate house or houses, and by providing nurses, attendance and other assistance and necessaries for them; which nurses, attendance, and other assistance and necessaries, shall be at the charge of the parties themselves, their parents or masters, (if able,) or otherwise at the charge of the town or place whereto they belong; and in case such person or persons are not inhabitants of any town or place within this State, then at the charge of the State.

Persons arriv-  
ing from in-  
fected places  
to give notice,  
when duly re-

**SECT. 2.** *Be it further enacted,* That any person or persons coming from any place out of this State, where the small pox or other malignant distemper is prevailing, into any town



within this State, shall, when thereto required by the Selectmen of such town, within the space of two hours from the time they shall be first informed of their duty by law in this particular, give notice to one or more of the Selectmen, or\* the Clerk of such town, of their coming there, and of the place from whence they came, upon pain of forfeiting, in case of neglect, the sum of one hundred dollars; and such person or persons, if not disabled by sickness, shall, within the space of two hours after warning given to him or them by the Selectmen of such town for that purpose, depart from this State in such manner, and by such road, as the said Selectmen shall direct, and in case of refusal, it shall be lawful for any Justice of the Peace in the county where such town may lie, by warrant directed to a Constable or other proper officer, or other person whom the Justice shall judge proper to cause such person or persons to be removed into the State from whence he or they may have come. And any person removed by warrant as aforesaid, who, during the prevalence of such distemper, shall presume to return into any town of this State, without liberty first obtained from such Justice, shall forfeit and pay the sum of four hundred dollars; and any inhabitant of this State who shall entertain in his house any person warned to depart as aforesaid, for the space of two hours after notice given him of such warning by one or more of the Selectmen aforesaid; shall forfeit and pay the sum of two hundred dollars.

SECT. 3. *Be it further enacted*, That it shall and may be lawful for the Selectmen in any town near to, or bordering upon either of the neighbouring States, to appoint, by writing under their hands, some meet person or persons to attend at ferries or other places by or over which passengers may pass from such infected places; which person or persons so appointed, shall have power to examine such passengers as they may suspect to bring infection with them, and if need be, to hinder and restrain them from travelling, until licensed thereto by a Justice of the Peace within such county, or by the Selectmen of the town in which such person or persons may come; and any passenger who, coming from such infected place, shall (without license as aforesaid) presume to

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quired, of their coming, place from, &c.

[\*557]  
[Ib. § 2.]  
on penalty, &c.

Such persons to depart the State, if able, &c. and on refusal a Justice may remove them.

Penalty for returning without liberty from such Justice.

Penalty on any inhabitant for entertaining such persons, warned to depart.

Selectmen to appoint persons to guard ferries, &c. to prevent infected persons from coming in.

[Ib. § 8.]

Penalty for any person from infected places.



**CH. 127.** travel within this State, unless it be to return by the most direct way to the State from whence he came, after he shall be cautioned to depart by the person or persons appointed as aforesaid, shall forfeit and pay the sum of one hundred dollars ; the several forfeitures aforesaid to be recovered\* by action of debt, in any Court of Record proper to try the same ; one moiety to and for the use of the town where the offence shall be committed, the other moiety to the use of the person who may sue for the same.

without leave, travelling in this State, unless, &c.

[\*558]  
Penalties how to be recovered.

Two Justices may by warrant remove such sick persons, and impress lodgings, necessities, and attendance.

[Ib. § 4.]

Sheriff or constable to execute such warrant.

Power of selectmen and Justice with regard to infected baggage, &c.

[Ib. § 5.]

to have it guarded,

**SECT. 4.** *Be it further enacted,* That if need be, any two Justices of the Peace may make out a warrant directed to the Sheriff of the county, or his deputy, or Constables of the town or place where any such sick person or persons may be, requiring them, or any of them, in the name of the State, with the advice and direction of the Selectmen of the same, to remove such infected person or persons, or to impress and take up convenient houses, lodging, nurses, attendance and other necessities, for the accommodation, safety and relief of the sick. And such Sheriff, his deputy and Constable, are hereby authorized and required to execute such warrant accordingly.

**SECT. 5.** *Be it further enacted,* That whenever there shall be brought into any town within this State, either from any other town therein, or from parts without the State, any baggage, clothing or goods of any kind whatsoever, and it shall be made to appear by the Selectmen of the town to which such baggage, clothing or other goods shall be brought, or by the major part of such Selectmen, to the satisfaction of any Justice of the Peace, that there is just cause to suspect baggage, clothing or other goods to be infected with the plague, small pox, pestilential fever, or other malignant contagious distemper ; it shall be lawful for such Justice of the Peace, and he is hereby required, in such case, by warrant under his hand and seal directed to the Sheriff or his deputy, or any Constable of the town in which such baggage, clothing or other goods shall be, requiring him to impress so many men as said Justice shall judge necessary to secure such baggage, clothing or other goods, and said men to post as a guard and watch over the house or other place or places where such



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[\*559]

baggage, clothing or other goods shall be lodged ; which guard and watch are hereby required to take effectual care to prevent such baggage, clothing or other goods being removed or intermeddled with, by any persons whatsoever, until due inquiry be made into the circumstances thereof ; requiring likewise the said Sheriff, his deputy\* or the Constable aforesaid, if it shall appear necessary, with the advice and direction of said Selectmen, to impress and take up convenient houses or stores, for the receiving, lodging and safe keeping of such baggage, clothing or other goods, until the same shall be sufficiently cleansed from infection : and in case it shall appear highly probable to the said Justice, that such baggage, clothing or other goods are infected as aforesaid he is hereby empowered and directed to issue his warrant in manner as aforesaid, requiring said Sheriff, his deputy or any Constable, or other person therein specially named, to remove said baggage, clothing or other goods, to some convenient place where there shall be the least danger of the infection spreading ; there to remain until the same shall be sufficiently aired and freed from infection, in the opinion of said Selectmen : and the said Sheriff, deputy Sheriff, or Constable, in the execution of said warrants, are empowered and directed, if need be, to break up any house, warehouse, shop or other place particularly mentioned in said warrant, where such baggage, clothing or other goods shall be ; and in case of opposition to require such aid as shall be necessary to effect the execution of said warrants, and repel such opposition ; and all persons are hereby required at the commandment of either of said officers, having either of the warrants aforesaid, under penalty of ten dollars to be recovered before any Justice of the Peace in the county where such opposition may happen, to assist such officer in the execution of the same warrant against any opposition as aforesaid ; and the charges of securing such baggage clothing or other goods, and of airing and transporting the same, shall be borne and paid by the owners thereof at such rates and prices as shall be set and appointed by the Selectmen of the town where such baggage, clothing or other goods shall be ; to be recovered by action of debt, by any person or persons who may have been employed in the business aforesaid, in any Court of Record proper to try the same.

and stored,

or removed.

Sheriff may break open houses, &c. and command aid in execution of their warrant.

Disobedience, penalty for ;

expenses, how to be paid, &c.



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SECT. 6. *Be it further enacted,* That if any master, sea-

Penalty for  
masters of ves-  
sels from in-  
fected ports,  
&c. refusing  
to answer  
questions on  
oath, by select-  
men, &c.  
[\*560]

[Ib. § 9.]

man or passenger belonging to any vessel, on board which any infection is, or may have lately been or suspected to have been, or which may have come from any port where any\* infectious mortal distemper prevails, shall refuse to make an answer on oath to such questions as may be asked him or them, relating to such infection, by the Selectmen of the town to which such vessel may come, (which oath the said Selectmen are hereby empowered to administer) such master, seaman or passenger, so refusing, shall forfeit the sum of two hundred dollars ; and in case he be not able to pay said sum, he shall suffer six months imprisonment ; said penalty to be adjudged on prosecution by indictment or information in any Court proper to try the same, one moiety of said fine to the use of the town where the offence may be committed, and the other moiety to the use of the Selectmen thereof, whose particular duty it is hereby made to prosecute therefor.

Courts, may  
adjourn from  
places of hold-  
ing, when mor-  
tally infectious  
distempers  
prevail there.

[Ib. § 10.]

SECT. 7. *Be it further enacted,* That whenever the small pox or other mortally infectious distemper shall prevail in any of the towns wherein the Supreme Judicial Court of this State, Circuit Courts of Common Pleas, or Courts of Sessions are to be holden, at the times prescribed by law, or by their own adjournment, for their sitting in such town ; the Justices of the said Courts respectively, are hereby empowered to adjourn and hold said Courts in any town within the same county by proclamation to be made in the shire town, or as near the same as safety will in their opinion permit.

Each town at  
their annual  
meeting may  
choose a health  
committee or a  
health officer.

[Ib. § 11.]

SECT. 8. *Be it further enacted,* That each town in this State, may at their meeting held in March or April annually, or at any other meeting legally warned for the purpose, when they shall judge it to be necessary, choose and appoint a health committee, to consist of not less than five, nor more than nine suitable persons, or one person to be a health officer, whose duty it shall be to remove all filth of any kind whatever which shall be found in any of the streets, lanes, wharves, docks, or in any other place whatever within the limits of the town to which such committee or health officer belongs, whenever such filth shall in their judgment endan-

Power and du-  
ty of such offi-  
cer.



ger the lives or the health of the inhabitants thereof, and also to require the owner or occupier to remove or discontinue any drain from which any such filth may proceed. All the expenses whereof to be paid by the person or persons who placed such filth there, if known ; or if not, by the town by\* which the said committee or health officer was appointed. And whenever any filth or drain as aforesaid shall be found on private property, said committee or health officer shall notify and order the owner or occupier thereof, after twenty-four hours' notice, to remove the same or discontinue such drain at their own expense ; and in case said owner or occupier shall neglect to remove such filth from his or her property or to remove or discontinue such drain after the expiration of the time aforesaid, he or they so offending shall forfeit and pay a fine of one hundred dollars, to be sued for and recovered, with costs of suit, by said committee or health officer, before any Court proper to try the same, for the use of the poor of the town in which such offence is committed : and said owner or occupier as aforesaid shall be liable and obliged to repay to said town all cost and charges which the said committee or health officer may have incurred in removing the filth from his or her property ; and in case of refusal to pay the same, he or they may be sued in the same way as is provided in this act for the recovery of fines as aforesaid.

SECT. 9. *Be it further enacted*, That whenever any vessel shall arrive at any port within this State, having on board any person visited with the plague, small pox, malignant fever, or any other pestilential disease, the master, commander or pilot thereof, shall not bring such vessel up near the town of the port where she first arrives, until liberty be first granted, in writing by the Selectmen thereof ; but they may bring such vessel to an anchor in such place below the town, as will be most for the safety of the inhabitants thereof, and the preservation of the vessel and the people on board, there to wait for orders from the Selectmen of such town before any passenger or person belonging to, or any thing on board the same be brought on shore : and any master or commander of such vessel who shall be found guilty of a breach of the law contained in this section, shall forfeit and pay a fine of

[\*561]

Vessels arriving in this State having any infected person on board, not to approach town without leave, &c.

but to anchor below,

[Ib. § 12.]

and there wait for orders.

Penalty for violating this provision.



CH. 127. two hundred dollars for every such offence, upon conviction thereof before any Court proper to try the same. And any pilot who may go on board any such vessel and pilot the same up to the town, without liberty first had and obtained from the Selectmen thereof as aforesaid, shall upon conviction\* in manner as aforesaid, forfeit and pay a fine of fifty dollars for every such offence: all which fines contained in this section may be sued for and recovered, with costs of suit in manner as aforesaid, by the Selectmen of the town where the offence is committed, to and for the use of the same town.

Fines, how recovered and applied.

[\*562]

In certain cases vessels must perform quarantine.

[Mass. Stat. Feb. 26, 1800, § 1.]

SECT. 10. *Be it further enacted*, That whenever it shall appear to the Selectmen of any sea port town within this State, that the safety of the inhabitants thereof requires, that any vessel or vessels which shall arrive in any harbour or river within this State, from any port or place, should perform quarantine, the Selectmen of any town where such vessel shall so arrive, are hereby required and empowered to cause such vessel or vessels to perform quarantine, at such place as they shall appoint, and under such restrictions and regulations as they may judge expedient; and any owner, master or supercargo, officer, seaman or consignee of such vessel or vessels, or any other person who shall neglect or refuse to obey the orders, directions, rules, regulations and restrictions of the said Selectmen, respecting the said quarantine, and shall be convicted thereof, upon indictment or information, before the Supreme Judicial Court or Circuit Court of Common Pleas, held in the county where the offence may be committed, shall forfeit and pay a sum not exceeding five hundred dollars, or be imprisoned for a term of time not exceeding six months, or both at the discretion of the Court having cognisance of such offence.

Penalty on master for violating orders as to quarantine, or making false and fraudulent declarations, &c.

[Ib. § 2.]

SECT. 11. *Be it further enacted*, That when any master or commander of any vessel shall come up to any sea port town aforesaid, with his said vessel, after notice given to him by any person or persons whomsoever, that a quarantine has been directed by the said Selectmen for all vessels coming from the port or place from which such master or commander shall have arrived; or shall falsely or fraudulent-



ly attempt to elude the directions of the said Selectmen by false and unfounded declarations of the port or place from whence he came ; or shall land, or suffer to be landed from his vessel, any person or persons, or apparel, bedding, goods or merchandize whatsoever without the permission of the said Selectmen, every such master or commander shall, upon conviction thereof,\* in manner and form pointed out in the tenth section of this act, forfeit and pay a sum not exceeding five hundred dollars, or suffer imprisonment for a term not exceeding six months, or both at the discretion of the Court having cognisance of such offence.

[\*563]

SECT. 12. *Be it further enacted*, That whenever the said Selectmen shall think it necessary to order all vessels which shall or may arrive at any of the sea port towns aforesaid, from any particular port or ports, to perform quarantine, and shall give notice of such order to the pilots of the said sea port towns ; it shall be the duty of such pilots to make known the said order to the captains or masters of all vessels which they shall board. And if any pilot after notice given to him as aforesaid, shall neglect to make known the said order, or shall pilot any such vessel up to any town aforesaid, he shall, upon conviction thereof in manner and form pointed out in the tenth section of this act, forfeit and pay a fine not exceeding one hundred dollars.

When selectmen order all vessels from particular ports to perform quarantine,

pilots to make such order known, &c.

Penalty for neglect.


SECT. 13. *Be it further enacted*, That the Selectmen of each of the sea port towns aforesaid, shall provide, at the expense of such towns, a suitable number of red flags, of three yards at least in length ; and the master of every vessel ordered to perform quarantine, for the purpose of purification, shall hoist one of said flags on the head of the mainmast, there to be kept during the whole time, so long as said vessel or vessels are performing quarantine ; and no person during that time shall go on board except those employed by the said Selectmen ; and every person who shall transgress by going on board any such vessel, shall be considered as contaminated with infection, and held to undergo purification in the same manner, and under the same regulations and restrictions as those persons who are performing quarantine on board such vessel or vessels, and shall there remain until discharged by

Selectmen to provide red flags.

Vessels on quarantine to hoist such flag.

No person to go on board, except, &c.



CH. 127.  order of said Selectmen, who, by any person or persons employed by them, may forcibly detain such person or persons transgressing as aforesaid, for the purpose of purifying as aforesaid.

When selectmen judge it necessary, &c. health committee, or health officer may perform all the duties, &c.

[\*564]

SECT. 14. *Be it further enacted*, That in every sea port town aforesaid, where there is a health committee or a health officer, legally chosen and appointed in manner as directed by\* this act, and the Selectmen of such town shall judge it necessary, and shall certify it under their hands, or the major part of them; such health committee or health officer are hereby authorized to perform all the duties, and exercise all the authority which Selectmen are authorized and required to execute, in requiring any person or persons, vessel or vessels as aforesaid, to perform quarantine in manner as pointed out in this act.

Forfeitures, how appropriated.

Expenses how to be paid.

SECT. 15. *Be it further enacted*, That all the forfeitures arising from the tenth, eleventh and twelfth sections of this act, shall accrue to the use of the town where the offence shall be committed; and all expenses arising from any vessel, person or persons, or effects on board the same, performing quarantine as aforesaid shall be paid by the owner or owners of such vessel, or effects on board the same; and in case of refusal to pay such expenses, the same may be recovered by an action of debt in the name of the Selectmen, health committee or health officer as the case may be, in any Court proper to try the same.

No person to inoculate for small pox, but at a licensed hospital.

None such to be within 100 rods of any dwelling house without consent, &c.

Penalty and mode of recovery.

SECT. 16. *Be it further enacted*, That no person shall inoculate any other person or inoculate himself or herself, or suffer himself or herself to be inoculated with the small pox, unless, at some hospital licensed by the Selectmen of the town. *Provided*, No such hospital shall be erected or licensed within one hundred rods of any dwelling house situated in an adjoining town without the consent of the Selectmen of such adjacent town, on pain that every person so offending shall for each offence forfeit a sum not exceeding one hundred dollars, to be recovered on indictment or presentment of the Grand Jury at the Supreme Judicial Court, or Circuit Court of Common Pleas within the county, to the use of the town in which such offence shall have been committed.



**SECT. 17.** *Be it further enacted,* That whenever any hospital shall be so erected, established or licensed, the physician, the persons inoculated, or sick there, the nurses, attendants, and all persons who shall approach or come within the limits of the same, and all such property as shall be used or brought there, shall be subject to all such orders and regulations as shall be made by the Selectmen or a committee\* appointed for that purpose to prevent spreading the infection.

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Regulations as to such hospital.

[\*565]

**SECT. 18.** *Be it further enacted,* That when the small pox shall unexpectedly break out in any town, the Selectmen of the same, shall have power, and it shall be their duty, immediately to provide such hospital or place of reception for the sick and infected as they shall judge best for their accommodation and the safety of the inhabitants, and may give license for inoculating there, all such persons as shall be supposed to have taken infection; and such hospitals and places of reception shall be subject to the orders and regulations of the Selectmen in the same manner as is herein before provided respecting licensed hospitals, and the said Selectmen shall cause such sick and infected persons to be removed to such hospitals or places of reception, unless the condition of the sick person should not admit of removal without danger of life, in which case the house or place where the sick shall remain, shall be considered as an hospital to every purpose before mentioned, and all persons residing in, or in any way concerned with the same, shall be subject to the orders and regulations of the Selectmen of the town as before expressed and provided.

When small pox unexpectedly breaks out in any town—power and duty of selectmen

**SECT. 19.** *Be it further enacted,* That in all cases abovementioned, it shall be the duty of the Selectmen to use all possible care to prevent the spreading of infection, and to give public notice to travellers of infected places by displaying red flags at proper distances, and by all other means which in their judgment shall be most effectual for the common safety; and in case any physician or other person within any of the hospitals or places of reception above described, or who shall attend, approach, or be concerned with the same, shall violate or contravene any of the restrictions, orders or regulations of the same, made according to this act,

Selectmen to give notice to travellers, of infected places.

Penalty for violating regulations.



**CH. 128.** either in respect of himself or his or any other person's property, the person so offending shall for each offence forfeit and pay a sum not exceeding one hundred dollars, nor less than ten dollars, to be recovered by the Selectmen, committee or health officer who may sue for the same, one half to the use of the person or persons who prosecute for the same, and the other half to the use of the town where the offence shall have been committed.

[\*566]

Every householder to give notice to selectmen, if the small pox be in his family, &c.

Penalty for neglect.

**SECT. 20.\*** *Be it further enacted,* That whenever any householder shall know that any person within his or her family is taken sick of the small pox, such householder shall immediately give notice thereof to the Selectmen of the town of which such householder shall be an inhabitant or resident, on pain that every householder who shall refuse or neglect to give such notice, shall forfeit and pay for such offence, a sum not exceeding thirty dollars nor less than ten dollars, to be recovered in the same manner as is provided for recovering the forfeitures mentioned in the sixteenth section of this act, and to be appropriated and paid in the same manner. [Approved March 10, 1821.]

## Chapter 128.

AN ACT respecting Pounds and impounding Beasts going at large, or damage feasant.

Each town to keep sufficient pounds.

[Mass. Stat. Feb. 14, 1789, § 1 & 2.]

Penalty for neglect.

Pound keepers and field drivers to be chosen annually.

**SECT. 1.** *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That each town shall keep and maintain a sufficient pound or pounds, in such place or places therein as the town shall direct; wherein horses, asses, mules, swine, goats, sheep and neat cattle may be impounded and kept, for the causes hereinafter mentioned; and any town that shall neglect, for the space of six months, to provide and maintain such a pound shall forfeit and pay the sum of fifty dollars, for the use of the county; to be recovered by presentment of the Grand Jury in any Court in the county; and there shall be chosen in each town, at the annual meeting for the choice of town officers, a suita-



ble person to keep (a) each pound, and three or more suitable persons for field drivers within such town, who shall severally be sworn to the faithful discharge of their duty; and it shall be the duty of the field drivers, thus chosen and sworn, to take and impound any such beasts found going at large, contrary to the provisions of this act, or damage feasant; and the pound keeper shall restrain all beasts impounded within the pound, and furnish them with suitable and sufficient food and drink at the expense of the person impounding them.

CH. 128.

Field drivers  
to be sworn:

their duty.

SECT. 2.\* *Be it further enacted*, That no horses, asses, or mules, of one year old or upwards, or swine, not under the care of a keeper, shall at any time be permitted to go at large on the commons or highways in any town; and no goats, or sheep, not under the care of a shepherd, shall be permitted to go at large, on the commons or highways aforesaid, between the first day of April and the fifteenth day of November in any year; and neat cattle may go at large on such commons or highways, at any and all times: *Provided however*, That any town may, by a vote thereof at the annual meeting for the choice of town officers in any year, prohibit neat cattle, not under the care of a keeper, from going at large as aforesaid, within such town (b) or any part thereof at any or all times within one year from the meeting.

[\*567]

Horses, mules  
and swine not  
to go at large,  
&c.

Nor goats and  
sheep between  
April 1, and  
November 15.

Towns may re-  
strict the right  
at all times.

(a) 1. An Act passed February 27, 1826, vol. 3, p. 171, provides—Sect. 1. "That it shall be the duty of the Selectmen of the several towns in this State, to determine, from time to time, what daily allowance shall be made to the keeper of any pound, or other person, for keeping any beast lawfully impounded in the town pound, under his care, or elsewhere, for which he may be entitled to payment; and to establish the fees of office of such pound keepers, for each and every kind of beast, which may be lawfully impounded, not exceeding ten cents for each such beast.—Sect. 2. That no pound-keeper shall, while holding such office, have or exercise the office of Field-driver, or Fence-viewer."

2. In trespass against a Field-driver, who was chosen at an annual town meeting for choosing town officers, it was held that the legality of the notification calling such meeting will be presumed, unless it were shown by the plaintiff to be otherwise. *Gilmore vs. Holt & al.* 4 Pick. 258.

(b) 1. A vote of a town to restrain cattle from going at large within the limits of such town, is binding on persons not inhabitants, whose cattle are found so going at large. *Gilmore vs. Holt & al.* 4 Pick. 258.

2. A turnpike road is a highway within the meaning of this statute. *Id.*



## CH. 128.

SECT. 3. *Be it further enacted,* That if any horses,

Penalty for horses, &c. or neat cattle going at large, contrary to this act :

or such beasts may be impounded, &c.

Pound keeper to receive fees for field drivers, and his own fees, &c.

Proviso.

[\*568

Penalty for ungelded horse going at large.

Penalty for rams going at large between August 10, and November 20.

Or such horses and rams may be impounded, &c.

asses, mules, swine, goats, or sheep shall be found going at large contrary to the second section of this act, or any neat cattle, when prohibited by a vote of the town, as is provided in said section, shall be found going at large as aforesaid, the owner or owners thereof shall forfeit and pay the sum of seventy-five cents for every horse, ass, or mule ; twenty cents for every swine ; twenty-five cents for every goat ; six cents for every sheep ; and fifty cents for every neat creature, so going at large ; or the beasts so going at large, may be taken and impounded by a field driver in any pound in the town, and restrained in such pound until the owner or owners thereof shall pay the pound keeper, for the use of such field driver, the sum of seventy-five cents for every horse, ass, or mule ; twenty cents for every swine ; twenty-five cents for every goat ; six cents for every sheep ; and fifty cents for every neat creature so found going at large and impounded ; together with the pound keeper's fees, and a reasonable sum for furnishing said beasts with food and drink ; or until the same shall be replevied, or dealt with as is herein after directed : *Provided*, That no mare or gelding of the horse kind, or neat creature shall be so taken, and impounded when the owner of such beast is unknown.

SECT. 4.\* *Be it further enacted,* That if the owner of any ungelded horse of the male kind, more than one year old, shall, at any time, suffer the same to go at large on the common or highways in any town, such owner shall forfeit and pay the sum of four dollars for each time such horse shall be so found going at large ; and if the owner of any ram or he-goat shall suffer the same to go at large, or out of his or her enclosure between the tenth day of August, and the twentieth day of November, the owner thereof shall forfeit and pay the sum of two dollars for each time every such ram or he-goat shall be found going at large out of his or her enclosure ; or such male horse, ram, or he-goat, may be taken and impounded, by a field driver or any other person, in any pound in the town and restrained in such pound until the owner thereof shall pay to the pound keeper for the use of the field driver or other person, impounding the same,



four dollars for every such male horse, and two dollars for every ram or he-goat thus taken and impounded, together with the pound keeper's fees and a reasonable sum for furnishing said male horse, ram or he-goat, with food and drink ; or until the same shall be replevied or dealt with, as is hereinafter directed. CH. 128.

SECT. 5. *Be it further enacted*, That any or either of the forfeitures aforesaid shall be recovered by action of debt in any Court competent to try the same, by and for the use of any person who shall sue therefor : *Provided*, That the action therefor shall be commenced within sixty days from and after the forfeiture was incurred, and not afterwards. Penalties, how recovered and limitation as to time.

SECT. 6. *Be it further enacted (c)*, That any person in-

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(c) 1. Sec. 6, is merely in affirmance of the common law. *Little vs. Lathrop*, 5 Glf. 356.

2. In the same case the Court recognise as established, the following principles, derived from the case of *Rust vs. Low & al.* 6 Mass. R. 90 :—

1. *At common law*, the tenant of a close was not obliged to fence against an adjoining close, unless by force of prescription.

2. *At common law*, when a man was obliged by prescription to fence his close, he was not obliged to fence against any cattle, but those which were rightfully in the adjoining close.

3. *At common law*, a man though not bound to fence against an adjoining close, was still bound at his peril to keep his cattle on his own close, and prevent them from escaping.

4. The legal obligations of the tenants of adjoining lands to make and maintain partition fences, where no prescription exists, and no written agreement has been made, rest on the statute.

5. An assignment pursuant to the statutes imposes the same duty as would result from a prescription.

6. Where there is no prescription or agreement, the provisions of the statute oblige the tenant, liable to make the partition fence, or any part of it, to fence only as in case of prescription at common law ; that is, against such cattle as are rightfully on the adjoining land. *Melody vs. Reab*, 4 Mass. 471.

7. Every person may maintain trespass against the owner of cattle, unless such owner can protect himself against the provisions of the statute, or by a written agreement, or by prescription.

“ From the foregoing ‘principles’—say the Court in *Little vs. Lathrop*—“ it appears”—

1. That where there is no prescription, agreement or statute assignment, no tenant is bound to fence against an adjoining close ; but in such case, there being no fence, each owner is bound at his peril, to keep his cattle on his own close.



**CH. 128.** jured in his tillage, mowing, or other lands under improvement, that are enclosed with a legal and sufficient fence, whether such improved lands be in common or general field, or in a close by itself ; by swine, sheep, goats, horses, mules, asses, or neat cattle, may have and maintain an action of trespass, *quare clausum fregit*, against the owner of the beasts, for his damages ; or he may impound the beasts doing the damage, or some of them, at his election, with or without the aid of a field driver ; and in case he impound the beasts, he may restrain them in one of the town pounds, or in some other place, under his (d) immediate care and inspection, as may be most\* convenient for relieving them with suitable food and drink ; which relief it shall be the duty of the person impounding to furnish, or cause to be sufficiently furnished, during their confinement ; and no action of trespass *quare clausum fregit* shall be had and maintained against the owner of any neat cattle for damages, nor shall such cattle be taken damage feasant and impounded, when such cattle broke into such close, or common or general field from the commons or highways (e) in any town, in a part where the fence of such close or field was not good and sufficient, according to law : *Provided*, That such neat cattle, shall, at the time of such breaking, be lawfully going at large on the commons or highways aforesaid.

Persons injured by sheep, swine, horses, &c. may maintain trespass. or impound the beasts.

[Mass. Stat. Feb. 14, 1789, § 3.]

How beasts may be impounded or secured.

[\*569]

No action, or impounding to be allowed if the beasts entered a field where the fence was not sufficient.

2. Where a tenant, for any of the reasons before stated, is bound to fence against an adjoining close, it is only against such cattle as are rightfully in that close ; and in such case, if the fence be not in fact made, the owner of either close, thus adjoining, may distrain the cattle escaping from the adjoining close, not rightfully there.

(d) 1. An inhabitant of a town taking up cattle found going at large within the town contrary to a vote of the inhabitants, may impound them in his private close. *Gilmore vs. Holt and al.* 4 Pick. 258.

2. A private individual who impounded a beast taken damage feasant, in a town pound, is not liable for any injury which such beast may receive from cattle confined in the same pound. *Brightman vs. Grinnell*, 9 Pick. 14.

(e) 1. The public have no rights in a highway, but a right to pass and repass therein : they cannot therefore justify turning their cattle therein, for the purpose of grazing. *Stackpole & al. vs. Healy*, 16 Mass. 86.

2. If cattle, so in the highway for the purpose of grazing, escape into the adjoining close, the owner of the cattle cannot avail himself of the insufficiency of the fences, in excuse for the trespass. *Ib.*



**SECT. 7.** *Be it further enacted,* That when an action of CH. 128.  
trespass shall be brought against the owner of any of the  
beasts aforesaid, for damages by them done upon his enclosed  
lands under improvement ; or when such creatures, taken  
damage feasant and impounded, shall be replevied, it shall be  
in the power of the Justice or Court before whom the cause  
shall be determined, to render judgment in favor of the person  
demanding damages for the injury sustained, upon satisfactory  
evidence being produced, that such creatures were  
clandestinely turned in, or broke into the close in a part  
where the fence was good and sufficient, according to law ;  
some other parts of the fence round the same close being deficient  
notwithstanding.

Otherwise, if the cattle were secretly turned in, or broke through the fence where it was sufficient, though some parts of the fence be insufficient.

[Ib. § 5.]

**SECT. 8.** *Be it further enacted (f),* That when any of  
the beasts aforesaid shall be impounded, whether it be done  
for being at large out of the owner's enclosure ; or on the  
commons or highways ; or for doing damage as aforesaid, the  
person impounding shall inform the owner of the beasts im-  
pounded (if known) within the space of twenty-four hours,  
by giving him a notification (g) thereof in writing, describing  
the creatures, and specifying the time, place, and cause of  
impounding the same : and in case the owner of the beasts  
impounded be absent, such written notification shall be left  
at his house or usual place of abode. And the person im-  
pounding shall also leave with the pound-keeper, if such  
beasts are impounded in a town pound, at the time they are  
committed to his custody, a memorandum, in writing, under  
his\* hand, of the cause of impounding, and the sum he de-  
mands as a forfeiture, or in damages from the owner before

Proceedings where beasts are impounded, and notice to be given.

[Ib. § 4.]

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(f) An additional Act, passed February 26, 1825, vol. 3, p. 161, provides " That the provisions contained in the eighth, ninth, and tenth sections of the Act to which this is in addition, be, and the same are hereby extended to the case of beasts impounded for doing damage in the tillage, mowing or other lands of any person under improvement, whether enclosed with a legal and sufficient fence or not : *Provided*, Such impounding be lawful, according to the principles of the common law."

(g) Notice given to the owner before impounding, of the fact and the cause of the taking of the cattle, and after the impounding, of the place where they are impounded, is a legal notice. *Gilmore vs. Holt & al.* 4 Pick. 258.



**CH. 128.** they are liberated ; and no action shall be maintained against the pound-keeper for detaining such beasts, until that sum, with his lawful fees, and the reasonable expense of furnishing them with food and drink, shall be paid : *Provided*, That if the person, whose beasts are impounded damage feasant, shall think the damages mentioned in the memorandum left with the pound-keeper, are unreasonable, he may within twenty-four hours after notice given as aforesaid, procure from the Clerk of the town, or a Justice of the Peace, a warrant directed to two such disinterested judicious persons as the Clerk or Justice shall appoint, to estimate the amount of such damages upon oath, according to their best judgment ; and the persons thus appointed, shall within twenty-four hours, estimate and certify to the pound-keeper the amount of damages ; and the sum thus certified shall be taken instead of the sum first left with the pound-keeper.

Mode of estimating damages in certain cases.

**SECT. 9.** *Be it further enacted (h)*, That if the owner of any beast or beasts taken and impounded by virtue of this act, shall not, within two full days, after notice given as aforesaid, pay the forfeiture or damages, and all fees and charges, and the reasonable expense of keeping them as aforesaid, or replevy the same, the impounder, if the owner of such beast or beasts be known, and has been notified as aforesaid, shall file an information of the transaction, by him subscribed and sworn to, with the Clerk of the town or a Justice of the Peace, and if it shall appear from such information that such impounder has substantially complied with the directions of the law in such cases, such Clerk or Justice may issue a warrant returnable into the Town Clerk's office, in seven days from the date, directed to any Constable of the same town, or to any other discreet and disinterested inhabitant of said town, if the Constable be the impounder or interested, to sell at public sale to the highest bidder, after giving twenty-four hours notice of such sale, by posting up a notification thereof at some public place within said town,

If owner do not pay damages and fees, or replevy cattle in two days, what proceedings are to be had.

Sale to be made of cattle sufficient to pay damages, fees, &c.

(h) 1. By § 9, the right to *sell* beasts taken damage feasant, is given only in cases where the injury was done to lands " inclosed with a legal and sufficient fence." *Heath vs. Ricker & al.* 2 Glf. 408.

2. See ante, note f, § 8.



all, or so many of such beasts as shall be sufficient to satisfy and pay the forfeitures or damages, and all fees and charges, and the expenses of keeping such beast or beasts, to be taxed and allowed\* by the Clerk or Justice ; and the Constable or other person to whom such warrant shall be directed, after paying the forfeitures or damages, and the fees and charges, and expense of keeping as aforesaid, and his fees, shall pay the overplus, if any there be, to the owner of the beast or beasts so sold on demand ; and the remainder of the beasts if any such there be, shall be liberated by the impounder : *Provided*, That when such beast or beasts are taken and impounded damage feasant, the impounder shall, prior to such sale, procure from the Clerk of the town, or a Justice of the Peace, a warrant directed to two such disinterested judicious persons as the Clerk or Justice shall appoint, to estimate the amount of such damage upon oath according to their best judgment ; and the persons thus appointed shall certify the amount of such damages to the pound-keeper ; and the sum thus certified shall be the amount of damages to be paid out of the proceeds of the sale instead of the sum first left with the pound-keeper.

Damages to be ascertained by appraisement under warrant from Justice of the Peace, prior to sale.

SECT. 10. *Be it further enacted (i)*, That if the owner of the beast or beasts impounded be unknown, the person impounding the same shall cause a notification thereof as aforesaid to be posted up in two public places in the same town, and in the two adjoining towns, nearest the place where the same may be taken up ; and if no owner or claimer appear within the space of three full days next after the impounding and notifying as aforesaid, then the person so restraining them may proceed with them in all respects as the law provides respecting stray beasts, after having his damages ascertained in case the beast or beasts be taken damage feasant, in manner as is before provided in the last proviso.

If the owner of beasts impounded be unknown, what proceedings are to be had.

SECT. 11. *Be it further enacted*, That if any person shall rescue (j) any beast or beasts, which may have been taken up

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(i) See ante, note f, § 8.

(j) 1. To constitute a rescue, there must be *first*, an actual possession in the party from whom the cattle are taken ; *secondly*, a taking away and setting at liberty. *Vinton vs. Vinton*, 17 Mass. 844.

2. The prevention intended is not an absolute and final obstruction, but



## CH. 128.

Penalty for rescuing beasts taken up going at large, before they are impounded.

[\*572]

Penalty for rescuing beasts taken up damage feasant, and mode of recovery.

[Mass. Stat. Feb. 14, 1789, § 6.]

Penalty for pound breach and mode of recovery.

[Ib. § 6.]

for being at large out of the owner's enclosure as aforesaid, out of the hands of the field driver, or from the custody and possession of any other person about to drive or convey them to pound, whereby the field driver or other person shall be prevented from impounding such beast, and the law evaded; every person so offending shall forfeit and pay not more than twelve dollars nor less than three dollars; to be recovered by action of debt in any Court proper to try the same,\* by and to the use of the field driver or other persons from whom the rescue may be made; and if any person shall rescue any beasts (k), taken up damage feasant as aforesaid, out of the hands or care of the field driver, or from the hands of any other person about to drive or convey them to pound, whereby the party injured may be in danger of losing such his remedy, and the law evaded, the person thus offending shall, for such rescue, forfeit and pay not more than twelve dollars, nor less than three dollars, to be recovered by action of debt in any Court proper to try the same, by and to the use of the field driver, or persons from whom the rescue may be made; and shall be further liable to pay the party injured the full damages he might be entitled to recover by impounding such beasts, to be recovered by an action of the case.

SECT. 12. *Be it further enacted* (l), That if any person shall make any pound breach, or by any indirect way or manner whatever, convey or deliver any of the beasts aforesaid, impounded from the pound or place where they may be restrained; the person thus offending shall forfeit and pay a fine of not more than fifty dollars nor less than fifteen dollars; to be recovered by a presentment of the Grand Jury, to the

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any forcible interruption by rescue which may occasion a prevention at the time. *Ib.*

(k) *Berry vs. Ripley*, 1 Mass. 167.

(l) 1. In an action *qui tam*, under § 12, the defendant cannot give in evidence the illegality of the distress. *Melody vs. Reab*, 4 Mass. 471.

2. Upon an indictment for pound-breach the illegality of the distress cannot be shown in the defence. *Com. vs. Beale, Jr.* 5 Pick. 514.

3. The penalties of statute 1789, § 6, are extended to cases of creatures impounded for going at large, contrary to statute, February 26, 1800, [ch. 129 of this vol.] *Ib.*



use of the county : And the person offending as aforesaid, shall be liable to pay the party injured or impounding such beasts, double the damage or forfeitures he may be entitled to by the impounding such beasts to be recovered in an action of the case ; and such party or impounder, when the pound breach is effected by an apprentice or a minor, may prosecute, for his damages or forfeitures, the parent or master under whose care such apprentice or minor may then be, or the apprentice or minor at his election ; in which action, as well as for damages occasioned by the rescue of the cattle about to be impounded, the defendant shall not be permitted to give in evidence, the insufficiency of the fence, if any such there be ; or that the beasts, when taken were under such circumstances as to render the impounding illegal, to prevent the party from recovering his full damages or forfeitures. [Approved March 20, 1821.]

CH. 129.

Parent or master liable for the wrongful act of minor child, or apprentice.

In action for penalty or for damages in such cases, defendant not allowed to give in evidence, insufficiency of fence, &c.

## Chapter 129.\*

[\*573]

AN ACT extending the powers of towns to restrain Cattle running at large.

**BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That the inhabitants of any town in this State, may at any legal town meeting, order and direct that any particular description of neat cattle or other commonable beasts, shall not go at large within certain particular parts of such town, without a keeper, under the penalties now provided by law in similar cases, and to be recovered in the same manner. [Approved June 27, 1820.]

Towns may order that commonable cattle shall not go at large.

[Mass. Stat. Feb. 26, 1800.]

## Chapter 130.

AN ACT respecting lost Goods and stray Beasts.

**SECT. 1.** **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That whoever shall find any money or goods lost of the value of one dollar or

Finder of money or goods to give notice to town clerk.



## CH. 130.

[Mass. Stat.  
Feb. 18, 1789,  
§ 1.]

upwards, whereof the owner is unknown, the finder shall, within ten days next following, give notice thereof in writing, unto the Clerk of the town in which they are found. And the finder shall also cause a notification thereof to be posted up in some public place within the same town, and also shall cause the same to be publicly cried therein, on three several days: *Provided*, There shall be any public crier in said town: And if the money or goods so found be of the value of ten dollars or upwards, then to be cried as aforesaid, and notice thereof posted up in like manner in the same, and the two next adjoining towns, within one month next after such finding.

Persons finding  
stray beasts to  
give notice to  
town clerk.

[Ib. § 2.]

SECT. 2. *Be it further enacted*, That every person who shall find and take up any stray beast shall cause the same to be entered with the color and marks, natural and artificial, and also to be posted up and cried in manner and time as aforesaid; and likewise within ten days put and keep a withe about the neck of such stray (a) beast, (sheep only excepted.) And such finder of lost goods or stray beast shall also\* within two months, and before any use thereof is made to its disadvantage, procure from the Town Clerk, or a Justice of the Peace, a warrant directed to two such disinterested judicious persons as the Clerk or Justice shall appoint, returnable into the Town Clerk's office in seven days from the date, to appraise and value the goods or stray beast, upon oath, at the true value thereof in money, according to their best judgment.

[\*574]

Appraisers to  
be appointed  
by Justice, or  
town clerk to  
value goods,  
&c. found.

If no owner ap-  
pears in a year,  
what proceed-  
ings to be had.

[Ib. § 3.]

SECT. 3. *Be it further enacted*, That if the owner of any such lost money, goods, or stray beast, appear within one year and a day next after such notice of the finding given to the Town Clerk as aforesaid, and make out his right and title thereunto, he shall have restitution of the same, or the full value thereof allowing and paying all necessary charges, to be liquidated and adjusted by some Justice of the Peace of the same county, in case of disagreement between the owner and the finder. And if no owner appear within one year and a day as aforesaid, then such strays, lost money or goods, shall

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(a) Where a person takes an estray to keep it for the owner, but neglects to pursue the course prescribed by the statute, he is nevertheless not liable to an action of trover, unless he uses the estray or refuses to deliver it upon demand. *Nelson vs. Merriam*, 4 Pick. 249.



be and remain to the finder, he paying one half of the value thereof, (all necessary charges being first deducted,) according to appraisement, unto the Treasurer of such town ; who is authorized to sue for the same in an action of the case.

SECT. 4. *Provided however : Be it further enacted*, That any person who shall find or take up any horse or horse kind, as a stray, and shall procure the same to be appraised, agreeably to the provisions of this act, in case the same shall be appraised at a sum not exceeding twenty dollars, shall, at the expiration of two months after such appraisal, proceed to sell the same at public vendue, having given four days previous notice of the time and place of sale, and shall pay over the money for which such horse may be sold to the Treasurer of the town in which he lives, after deducting therefrom the expenses of taking up, posting and appraising such horse, as provided for in this act, with one dollar for his fee in selling such horse.

Stray horses may be sold after 2 months, in case.

[Mass. Stat. June 18, 1815, § 1.]

Mode of proceeding.

SECT. 5. *Be it further enacted*, That the owner of such horse, so taken up and sold, shall be entitled to receive the money so deposited with the town Treasurer : *Provided*, He shall apply for the same within the space of one year after the\* same shall have been paid to the Treasurer aforesaid ; and in case the owner of such horse shall neglect to apply for such money for the term of one year, the same shall be appropriated as is provided by this act.

Owner entitled to money, if he apply within one year, otherwise, &c.

[Ib. § 2.]  
[\*575]

SECT. 6. *Be it further enacted*, That if any finder of any lost goods, money or stray beast, of the value of one dollar or upwards, shall neglect to cause the same to be entered, cried and posted up in manner and time as before directed, or to withe such stray beast, he shall forfeit and pay the full value of such goods, money or stray beast, one half to the use of the town, and the other half to him or them that will prosecute and sue for the same. And if the owner of any stray beast or other person, shall take off the withe from the same, or take away such stray beast, before all the necessary charges arisen for entering, crying, notifying keeping and appraising thereof be defrayed, such person so offending, shall forfeit and pay unto the finder of such stray beast the full value of the same.

Penalty for neglect.

[Mass. Stat. Feb. 13, 1789, § 5.]



## CH. 131.

Horses, &c.  
not to be taken  
up as strays be-  
tween April 15  
and Nov. 1, un-  
less, &c.  
[Ib. § 6.]

SECT. 7. *Be it further enacted*, That no person from the fifteenth day of April, to the first day of November, shall take up any horse, gelding, mare or other beast for a stray, unless such beast be taken damage feasant in some inclosure, and impounded for that or some other sufficient cause. [Approved January 27, 1821.]

## Chapter 131.

AN ACT for the due regulation of Weights and Measures (a).

SECT. 1. **BE** *it enacted by the Senate and House of*

Former stand-  
ards continued.

[Mass. Stat.  
Feb. 26, 1800,  
§ 1.]

State treasurer  
to procure pub-  
lic standards of  
weights and  
measures.

[\*576]

*Representatives, in Legislature assembled*, That the brass and copper weights and measures heretofore adopted, used and allowed as standards, be and remain the public allowed standards throughout this State, by which all weights and measures shall be tried, proved and sealed, in manner as is hereinafter provided. And it shall be the duty of the Treasurer of this State, at the expense thereof, to cause to be had and preserved as public standards, and which shall be used only as such, the following beams, weights and measures, to wit: one\* bushel, one half bushel, one peck, one half peck, one ale quart, one wine gallon, one wine half gallon, one wine quart, one wine pint, one wine half pint, and one wine gill; said measures to be made of copper or pewter, conformable as to contents, to said standard measures, and as to breadth, that is to say, the diameter of the bushel, not less than eighteen inches and a half, containing thirty-two Winchester quarts; of the half bushel, not less than thirteen inches and three quarters, containing sixteen Winchester quarts; of the peck, not less than ten inches and three quarters, containing eight Winchester quarts; and of the half peck, not less than nine inches, containing four Winchester quarts; the admeasurement to be made in each instance, within side of the meas-

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(a) At common law it is an indictable offence to cheat any man of his money, goods or chattels, by using false weights or false measures. *Com. vs. Warren*, 6 Mass. 72.



CH. 131.

ure : also one ell one yard, one set of brass weights to four pounds, computed at sixteen ounces to the pound, with fit scales and steel beam : also a good beam and scales, and a nest of Troy weights, from one hundred and twenty-eight ounces, down to the least denomination, with the weight of each weight, and the length of each measure marked or stamped thereon respectively, and sealed with a seal, to be procured and kept by the Treasurer aforesaid ; and also one fifty-six pound weight, one twenty-eight (a) pound weight, one fourteen pound weight, and one seven pound weight, made of iron.

SECT. 2. *Be it further enacted*, That it shall be the duty of the Treasurer of each county, at the expense thereof, to procure if the same has not already been done, one complete set of beams, and of the brass, copper, pewter, and iron weights, and of the measures aforesaid, excepting the bushel measure, well tried, proved and sealed by the said State standards, and marked or stamped as aforesaid ; said measures, as to breadth, as well as contents, to be conformable to the State standards as aforesaid ;—which the said county Treasurer shall keep and preserve, for the use of the respective counties, and to be used as standards only. And once in ten years, after the same are, or shall have been procured, the respective Treasurers for the time being, of the several counties, shall cause the same to be tried, proved and sealed by the Treasurer, and standards of the State : and if any county Treasurer shall neglect his duty in this behalf,\* he shall forfeit and pay, for each neglect, the sum of two hundred dollars to the use of the State, to be recovered in an action of debt, in the name of the State, in any Court proper to try the same, with costs of suit.

County treasurer to procure beams, weights and measures to be sealed by State standards :

[Ib. § 2.]

to be proved by State standards every ten years.

[\*577]

Penalty for neglect.

SECT. 3. *Be it further enacted*, That it shall be the duty of the Treasurer of each town within this State, at the expense of such town to procure, if the same has not already

Town treasurers to procure beams, weights and measures conforming to

(a) It is provided by ch. 404, § 1, vol. 3, p. 255, as follows :—“ That all such articles as have been sold or exchanged in any market or town in this State by gross or avoirdupois weight, shall be sold or exchanged by the following regulation of said weights, viz : Twenty-five avoirdupois pounds shall constitute one quarter, four quarters one hundred, and twenty hundred one ton.”



**CH. 131.** been done, and ever after to preserve as town standards, a complete set of the beams, weights and copper or pewter measures, conformable to the State standards as aforesaid ; excepting however, the said bushel measure ; and excepting also, that no Treasurer of any town shall be bound to procure a nest of Troy weights other than from the lowest denomination to the size of eight ounces, which it is hereby made his duty to procure : *Provided however,* That it shall be lawful for the Treasurer of any town aforesaid, to procure a wooden half bushel, peck, and half peck, conformable as to breadth and contents to the copper or pewter measures of the same denomination, in lieu of such copper or pewter measures, all of which he shall cause to be well tried, proved and sealed as aforesaid, either by the Treasurer of this State, or of the county within which such town shall be situated, and to have the same tried, proved and sealed as aforesaid, once in every ten years afterwards. And it shall also be the duty of town Treasurers, to procure at the expense thereof, and to preserve a proper town seal, for the purposes hereinafter mentioned. And if any town Treasurer shall neglect his duty in the premises, he shall for each neglect, forfeit and pay one hundred dollars, one moiety thereof to the use of the town, and the other moiety to him or them who shall sue for the same, to be recovered in an action of debt, with costs of suit, in any Court proper to try the same.

State stand-  
ards.

[Ib. § 8.]

Proviso—wood  
measures may  
be used.

Town seal to  
be kept.

Penalty for  
neglect.

Selectmen to  
appoint sealers  
and remove  
them and fill  
vacancies.

[Ib. § 4.]

[\*578]

**SECT. 4.** *Be it further enacted,* That it shall be the duty of the Selectmen of each town in this State, in the month of March or April annually, to appoint a suitable person to be a sealer of weights and measures within the same. And it shall also be the duty of the Selectmen in such towns in this State, as shall, at any of their annual meetings, vote to have more than one sealer of weights and measures within their\* town, to appoint suitable persons therefor. And the Selectmen of the several towns are hereby authorized to remove from office any person or persons by them appointed as sealers of weights and measures by virtue of this act. And it shall be the duty of the Selectmen, upon any vacancy which shall happen in the office of sealers of weights and measures, either by death, removal, resignation, refusal to accept, or otherwise, imme-



diately to appoint some other suitable person to fill the place. And each person who shall be appointed to such office shall be notified of his appointment, and sworn as other town officers are. And if any person so appointed and notified shall refuse or neglect to take such oath, for the term of seven days after he shall have received such notice, he shall forfeit and pay five dollars, to be recovered in the manner and to the uses other fines are, for refusing to serve in other town offices. And if any Selectman shall not duly execute this law, so far as to him appertains, he shall forfeit and pay, for each months neglect, the sum of ten dollars, to be recovered in like manner, and to like uses. And the Treasurers of such towns as shall, as aforesaid, vote to have more than one sealer of weights and measures, within their town, shall at the expense thereof, procure, and shall preserve the necessary additional seals, weights and measures, before specified ; so that each sealer in such town may have complete sets of the same, under like penalties and forfeitures as are provided in the third section of this act.

CH. 131.

Sealers to be sworn.

Penalties for neglects.

SECT. 5. *Be it further enacted*, That it shall be the duty of each Sealer of weights and measures, as soon as appointed and sworn, to receive of the town Treasurer, the said town standards and seal, and to give him a receipt therefor, expressing the contents thereof and the condition in which the same may be, and in such receipt engaging, at the expiration of his (the said sealer's) office, to deliver the same in like order and condition, to the said Treasurer ; and such sealer shall be accountable to the town for the due preservation of the same, so long as he shall hold them on such receipt.

Sealers when sworn to keep the town standards.

[Ib. § 5.]

SECT. 6. *Be it further enacted*, That it shall be the further duty of the said sealer of weights and measures in the month of May in every year, to post up written notifications in the several\* parts of the town, expressing therein the time and place, when and where he will attend such of the inhabitants as live within the limits described in his notification, and seal all such of their great and small beams, weights and measures as they shall bring in for that purpose. And the said sealer shall deface and destroy all weights and measures which cannot be brought to their just standards.

Sealer to notify, in May, the places where he will attend to seal, &c.  
[\*579]

[Ib. § 6.]



## CH. 131.

Sealer to visit  
houses, stores,  
&c. to prove  
weights and  
measures.

[Ib. § 7.]

Penalty for  
neglect.

Banks to have  
their weights  
sealed in June  
annually.

[Mass. Stat.  
Mar. 9. 1800,  
§ 2.]

[See ch. 519,  
§ 17, vol. 3, p.  
383.]

[\*580]

SECT. 7. *Be it further enacted*, That the said sealer be, and he hereby is, authorized and required, to go to the houses of such innholders, and to the ware houses, stores and shops of such merchants, traders and retailers of spirituous liquors, and to the houses of such of the other inhabitants, as shall neglect as aforesaid, to bring or send in, the said beams, weights and measures ; and there, (at their said houses, stores, shops and ware houses) to try, prove and seal the same beams, weights and measures. And if any such person or persons, shall refuse or neglect to have his, her or their beams, weights or measures so tried, proved and sealed, he, she or they, shall forfeit and pay ten dollars for each offence ; one moiety to the use of the poor of the town, and the other moiety to the sealer, to be recovered in an action of debt, with costs as aforesaid. And if any sealer of weights and measures shall neglect his duty in any of the cases in this act specified, he shall for each neglect, forfeit and pay not less than five nor more than ten dollars : one moiety thereof to the town, and the other moiety to the informer, to be recovered by an action of debt, or on the case with costs as aforesaid.

SECT. 8. *Be it further enacted*, That the directors of the several Banks, which are or shall be incorporated within this State, shall annually, in the month of June, at the expense of said Banks, have all the weights used in their respective Banks compared, proved and sealed by the Treasurer, or by some person specially authorized by him for that purpose ; which shall supersede, so far as respects such Banks, the sealing of Troy weights by the town sealer ; and no tender of gold by any Bank in this State, weighed with weights other than those compared, proved and sealed as aforesaid, shall be legal. And to prevent the unavoidable imperfection of scale beams, from operating unequally in payments\* of gold, the payer or receiver may require that the gold shall be weighed in each scale, so that the irregularity of the different ends of the beam, if any, may be ascertained, and the mean weight resulting therefrom, shall be considered as the true weight of the parcel of gold so to be paid or received.

SECT. 9. *Be it further enacted*, That it shall be the duty



of the several county Treasurers at the expense of their respective counties, before the first day of July, which shall be in the year of our Lord one thousand eight hundred and twenty-four, and once in every ten years afterwards, to have their county standards of Troy weight compared, proved and sealed by the Treasurer of the State, or some person by him thereto specially authorized: and it shall be the duty of the Treasurers of the several towns, at the expense of their respective towns within one year after the first day of July aforesaid, and once in every ten years afterwards, to have their town standards of Troy weight compared, proved and sealed by the Treasurer of the State or of the county wherein such town shall be, or some person thereto specially authorized by said State or county Treasurer.

CH. 131.

County treasurers to have weights, &c. sealed every 10 years.

[lb. § 8.]

SECT. 10. *Be it further enacted*, That the vibrating steelyard invented by Benjamin Dearborn, and the vibrating steelyard invented or improved by Samuel Hills, be permitted to be used in all cases of weighing throughout this State: *Provided*, That before being offered for sale, or the same shall be used, each beam and the poises thereof, shall be sealed by some public sealer of weights and measures, appointed according to law.

Vibrating steelyards may be used, &c.

[Mass. Stat. Dec. 4, 1816.]

SECT. 11. *Be it further enacted*, That all measures by which fruit or any other thing usually sold by heaped measure, shall be sold, shall be conformable as to capacity and breadth, to the public allowed standards as aforesaid. And if any person shall sell, or expose to sale, any fruit or other thing, usually sold by heaped measure, by any other measure as to capacity and breadth, than is before mentioned, or shall sell, or expose to sale, any goods, wares or merchandize, grain or other commodity whatsoever, by any other beams, weights or measures, than those sealed as aforesaid, he shall forfeit and pay, for each offence, not less than one\* dollar, nor more than ten dollars according to the circumstance of the case; one moiety thereof to the use of the town, and the other moiety to the said sealer or to him or them who shall sue for the same, to be recovered in an action of debt, or on the case, with costs of suit, in any Court proper to try the same.

Size of fruit measures.

[Mass. Stat. Feb. 26, 1800, § 8.]

Penalty for using weights, measures, &c. not sealed.

[\*581]

SECT. 12. *Be it further enacted*, That this act shall



CH. 132. take effect and be in force until such time as the Congress of the United States shall have fixed by law the standards of weights and measures. [Approved February 5, 1821.]

Limitations.  
[Ib. § 9.]

See ch. 404, vol. 3, p. 255.

Chapter 132.

AN ACT respecting Engine Men, Fire Engines and the Extinguishment of fire.

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That the Selectmen of such towns in this State as are or may be provided with a fire engine, or engines, be and they are hereby empowered, if they judge it expedient, to nominate and appoint a number of suitable persons not exceeding twenty-five (a) to one engine, for engine men ; who shall continue in said office during the pleasure of such Selectmen ; which engine men shall be, and they are hereby authorized and empowered, to meet together sometime in the month of May (b) annually ; at which meeting, they shall have authority to choose a master, or director and Clerk of the said engine ; and establish such rules and regulations, respecting their duty as engine men, as shall be approved of by the Selectmen, and to annex penalties to the same which may be recovered by the Clerk of said engine men, before any Justice of the Peace, in the same county : *Provided*, No penalty shall exceed six dollars and that such rules and regulations shall not be repugnant to the laws of this State.

Selectmen to  
appoint engine  
men,

[Mass. Stat.  
Feb. 7, 1786,  
§ 1.]

who are to meet  
in May, choose  
officers and es-  
tablish regula-  
tions, &c.

Engine compa-  
nies to meet  
monthly to ex-

SECT. 2. *Be it further enacted*, That the respective companies of engine men who may be nominated and appointed in pursuance of this act, shall be held and obliged to meet

(a) Enlarged to sixty, by ch. 506, vol. 3, p. 355. Appointments not to include any member of any company of Artillery, Cavalry, Light Infantry or Riflemen, under certain circumstances. See ch. 283, vol. 3, p. 123.

(b) The meeting may be in April, May, August, October or November, when any other officers may also be elected, besides those named above, as may be deemed necessary. See ch. 473, vol. 3, p. 320.



together once a month and oftener if necessary, for the purpose of examining the state of the engine to which they belong,\* and the appendages belonging to the same, and seeing that the said engine is in good repair, and ready to proceed on any emergency to the relief of any part of the community that may be invaded by the calamity of fire; and the said engine men appointed as aforesaid shall be held and obliged to go forward either by night or by day, under the direction of the fire wards in the same town, and to use their best endeavours to extinguish any fire that may happen in the same town, or the vicinity thereof, and shall come to their knowledge without delay. And whereas there may, in some towns, be an engine or engines the property of individuals who would incline, the same might be employed for the benefit of the said town, subject to the like regulations and privileges as though the said engine or engines appertained to the said town:

SECT. 3. *Be it further enacted*, That whenever the proprietor or proprietors of an engine or engines shall apply to the Selectmen of any town in which the said engine or engines may be, setting forth that they have such engine or engines which they are desirous should be employed for the benefit of the said town, the Selectmen of such town, upon application as aforesaid, may appoint engine men in the same manner, with the same privileges and subject to the same regulations as though the said engine or engines were the property of the said town.

SECT. 4. *Be it further enacted*, That if any person, being appointed in manner herein before directed shall, in the opinion of the said Selectmen be negligent and remiss in the duties required of him as an engine man, by this act, it shall be the duty of the Selectmen in the same town, upon sufficient evidence thereof, to discharge him from said company, and proceed to appoint another engineman in his room, in the manner herein before directed.

SECT. 5. *Be it further enacted*, That the said Selectmen, may in their discretion select from the engine men aforesaid, any number for each engine in their respective towns, whose duty it shall be, under the direction of the fire

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amine engines,  
&c.  
[Ib. § 2.]  
[\*582]

and to be under  
the direction of  
firewards, on  
duty.

Selectmen may  
in same man-  
ner appoint en-  
gine men for  
private en-  
gines.

[Ib. § 3.]

Selectmen may  
discharge neg-  
ligent engine  
men and ap-  
point others.

[Ib. § 5.]

Selectmen may  
select certain  
engine men for  
special service  
at fires, &c.



**CH. 132.** wards, to attend fires therein, with axes, fire hooks, fire sails and ladders, and who shall do such further duty as the Selectmen shall from time to time prescribe, and shall be entitled to all the exemptions and privileges aforesaid.

[\*583]

Towns may choose fire-wards.

[Mass. Stat. Mar. 10, 1797, § 1.]

Penalty for refusing to serve.

Their duty at fires.

Duty and power of firewards at fires;

[Ib. § 2.]

and of certain other civil and military officers in their absence.

Power in such officers to require assistance.

**SECT. 6.\*** *Be it further enacted,* That each town in this State in their March or April meeting annually, wherein the qualified voters shall think it expedient to choose fire wards, shall hereafter have power to elect such number of suitable persons to be fire wards therein, as shall be deemed necessary; and each person so elected shall be notified thereof within three days; and shall within three days after being so notified, enter his acceptance or refusal of the said office with the town Clerk. And if any person being so elected and notified, shall neglect to enter his acceptance or refusal as aforesaid, he shall forfeit and pay ten dollars, unless excused by the town; and the town shall have power to elect another in his place, in case of such neglect or refusal. And when any fire shall break out in any town wherein fire wards shall be appointed, they shall immediately attend thereat, and carry with them a suitable staff or badge of their office.

**SECT. 7.** *Be it further enacted,* That when any fire shall break out in any town, the fire wards thereof, who shall be present at the place in immediate danger, or any three of them, and where no fire wards shall be appointed, a major part of the Selectmen present; or in their absence two or three of the civil officers present; or in their absence two or three of the chief military officers of said town present, shall have power to direct the pulling down or demolishing any such house or building as they shall judge necessary to be pulled down or demolished, in order to prevent the further spreading of the fire. And during the continuance of any fire, the said fire wards, or officers as the case may be, shall have power to require assistance for extinguishing the same, and for removing any furniture, goods, or merchandize from any building on fire, or in danger thereof, and to appoint guards to secure the same; and also assistance for pulling down or demolishing any house or building as the case may require; and further to suppress all tumults and disorders. And the said fire wards, Selectmen or officers as the case may be,



shall have authority to direct and appoint the stations and operations of the engine men with their engines and of all other persons, for the purpose of extinguishing the fire, and preventing its increase ; and if any person\* shall refuse or neglect to obey any order given by said fire wards or officers in the premises, the person so offending shall forfeit and pay for each offence ten dollars.

[\*584]  
Penalty for refusing to obey such orders, &c.

SECT. 8. *Be it further enacted*, That if the pulling down or demolishing of any house or building, by the directions aforesaid, shall be the means of stopping the said fire ; or if the fire stop before it come to the same, then every owner of such house or building shall receive a reasonable compensation, and be paid for the same by the inhabitants of the town in which the fire shall happen. And it shall be the duty of the qualified voters in such town, to grant such sum or sums of money as shall be thought necessary and proper by the Selectmen of the same town, and of the Assessors to assess the same : *Provided always*, That when it shall be adjudged fit that the house or building where the fire shall first begin and break out should be pulled down or demolished to prevent the further spreading and increase of the same fire ; then the owner of such house or building shall receive no compensation for the same : *Provided also*, That if any person shall find him or herself aggrieved by the doings of the town, Selectmen or Assessors thereof in estimating, voting or assessing such sum or sums, he or she shall have a right to appeal and complain to the next Court of Sessions to be holden in the county ; and the said Court thereon shall have power, on a consideration of all the circumstances of the case, to confirm said doings of said town, Selectmen or Assessors, or to alter the same in such manner as the said Court shall judge proper ; and in either case to award legal costs, as the justice of the case may require ; and the Collectors to whom the said assessments shall be committed to collect, shall have the same powers and be subject to the same duties, as in the collection of other town taxes, as well in collecting an assessment so confirmed or altered, as in cases wherein there shall be no appeal.

When a building is demolished to stop a fire, how the owner is to be indemnified.

[Ib. § 3.]



## CH. 132.

Punishment for concealing, embezzling or plundering goods, &c. at fires.

[Ib. § 4.]

[\*585]

Penalty for occupying any building as a sail loft or livery stable except in such places as may be approved by selectmen.

[Ib. § 5.]

Fines and penalties how recovered and appropriated.

[Ib. § 6.]

Engine men excused from serving as jurors, in case. [Mass. Stat. Feb. 6, 1786, § 4; Feb. 25, 1795.]

SECT. 9. *Be it further enacted*, That if any person shall, in such case of fire, plunder, purloin, embezzle, convey away or conceal any furniture, goods or chattels, rights or credits, merchandize or effects of the inhabitants whose houses or buildings shall be on fire or endangered thereby, and said inhabitants shall be put upon removing the same, and shall not\* restore or give notice thereof to the owner (if known) or to one of the fire wards of the town, or bring them into such public place as shall be assigned by the Selectmen of the town within two days after public notice shall be posted in some public place in the town by the Selectmen thereof, for that purpose, the person or persons so offending, and being thereof convicted, shall be deemed guilty of larceny, and punished accordingly.

SECT. 10. *Be it further enacted*, That if any person shall occupy or improve any tenement or building whatever in any part of any maritime town in this State, for the business or employment of a sail maker or rigger or keeper of a livery stable except only in such parts of the town as the Selectmen thereof or a major part of them, shall direct and determine, such sail maker or rigger, so offending, shall forfeit and pay for each offence ten dollars ; and such keeper of a livery stable shall forfeit and pay for each offence fifty dollars, for every month so occupying the same, and so in proportion for a longer or shorter time.

SECT. 11. *Be it further enacted*, That the several fines or forfeitures aforesaid, shall be, two third parts thereof to the use of the poor of the town where the offence shall be committed, and the other third thereof to him or them who shall inform and sue for the same ; and shall be recoverable with costs of suit, in any Court proper to try the same.

SECT. 12. *Be it further enacted*, That all persons legally attached to any engine (c) within this State, be and they hereby are excused from being chosen or drawn to serve as jurors in any Court within this State, in all cases where the town to which such engine men belong, shall at a legal meeting of

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(c) See onward, ch. 164, § 2, and ch. 240, § 3, vol. 3, p. 71, repealing the same, and making farther provision on the subject. See also ch. 506, vol. 3, p. 355.



its inhabitants, by vote declare the expediency of excusing such persons from serving as jurors. [Approved March 16, 1821.] CH. 133.

Additional Act, ch. 331, Vol. 3, p. 176.

## Chapter 133.

AN ACT for the regulation of Innholders, Retailers, and Common Victuallers. (a)

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That no person shall presume to be a common victualler, innholder, or seller of wine, beer,\* ale, cider (b), brandy, rum, or any strong liquors, by retail, or in a less quantity than twenty-eight gallons, and that delivered and carried away all at one time, except such person be duly licensed as is hereinafter provided, on pain of forfeiting the sum of fifty dollars : and if any person shall at any time sell any spiritous liquors, or any mixed liquors, part of which is spiritous, without license therefor, duly had and obtained according to law, he shall forfeit and pay for each offence the sum of ten dollars (c).

Innholders, &c. to be licensed. [Mass. Stat. Feb. 28, 1787, § 1.]

[\*586]

Penalty for selling, &c. without license.

SECT. 2. [Repealed; see ch. 482, vol. 3, p. 330.]

It made it the duty of town officers to meet annually to grant licenses; and imposed a duty of \$6 on retailers; and made it the duty of the town Clerk to record licenses granted, and make a return of them to Court Common Pleas.]

(a) 1. This statute is not repugnant to the general rights and liberties of the citizen, secured by the constitution. *Lunt's case*, 6 Glf. 412.

2. A license granted will not authorize a person to exercise privileges under it in more than one place at a time. See ch. 278, § 2, vol. 3, p. 105.

3. A small building on the same lot with a dwelling house, at the distance of forty-five rods from it, with a passage way between them, is not an apartment or dependency of the dwelling house, though the same person occupies the whole lot, including the house and building. A license, therefore, which authorizes him to sell spiritous liquors at his dwelling house, will not justify him in selling them at the small building. *Com. vs. Estabrook*, 10 Pick. 298. See onward, note e.

(b) So much of § 1, as prohibits the sale by retail, of "beer, ale and cider," is repealed by ch. 482, § 4, vol. 3, p. 332.

(c) Any forfeiture not exceeding \$20, mentioned in this act, may be re-



CH. 133. SECT. 3.\* *Be it further enacted,* That all innholders (d)

**[\*587]**  
**Innholders to be suitably provided, &c.**  
**[Ib. § 8.]**  
**To have signs.**  
**Punishment for neglect.**

shall at all times be furnished with suitable provisions and lodging for the refreshment and entertainment of strangers and travellers, pasturing and stable room, hay and provender, (saving that in populous sea port towns, stable room, hay and provender only are required,) for their horses and cattle, on pain of being deprived of their license. And every licensed innholder, shall at all times, have a board or sign affixed to his or her house, or in some conspicuous place near the same, with his or her name at large thereon, and the particular employment for which he or she is licensed ; and if any innholder enjoined by law to be suitably provided to receive and entertain strangers, travellers or others, as occasion may require, shall be convicted of refusing to make suitable provisions when desired, for the receiving of strangers, travellers, and their horses and cattle, or for any public entertainment, such person upon being convicted thereof before the Circuit Court of Common Pleas, of the county to which such person belongs, shall by the said Justices be deprived of his or her license : and the said Justices shall be, and they are hereby empowered and directed to order the Sheriff of the same

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covered by complaint, or action of debt before a Justice of the Peace, one half to the complainant or plaintiff, and the other to the town where offence was committed. See ch. 278, § 1, vol. 3, p. 105.

(d) An innkeeper is chargeable for the loss of the goods of his guest committed to his care ; unless the loss is caused by the act of God or of the common enemy, or by the neglect or fault of the guest.

An action brought against an innkeeper for the loss of goods entrusted to him by a guest, who is a servant of the owner, may be brought in the name of the owner.

With respect to such entrusting, one who hires the goods is the servant of the owner.

If a horse, chaise and harness are delivered to an innkeeper, and he receives no separate compensation for keeping the chaise and harness, he is nevertheless liable for the loss of them, for the payment for keeping the horse includes a compensation for keeping the chaise and harness.

If a person commits his horse to an innkeeper to be fed, he is a guest, although he do not himself lodge or receive any refreshment at the inn.

If an innkeeper, being also a keeper of a livery stable, receives a horse to be fed, without giving notice that he receives it as keeper of the livery stable, he will be answerable as innkeeper for the loss of it. *Mason & al. vs. Thompson*, 9 Pick. 280.



county, or his deputy Sheriff to cause the sign of such convicted person to be taken down.

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SECT. 4. *Be it further enacted*, That no innholder, victualler, or retailer, shall have or keep in or about their houses, shops, yards, gardens, or dependencies (e), any dice, cards, bowls, billiards, quoits, or any other implements used in gaming; nor shall suffer any person or persons resorting unto any of their houses or shops to use or exercise any of the said games, or any other unlawful game (f) or sport within their said houses, shops, or any of the dependencies as aforesaid, or places to them belonging, on pain of forfeiting the sum of ten dollars for every such offence; and every person convicted of playing as aforesaid, in any such house, shop or dependencies thereof, shall forfeit the sum of five dollars.

No innholder to keep in or about his houses cards, billiard tables, &c. or suffer gaming therein.

[Ib. § 5.]

Penalty for violation.

SECT. 5.\* *Be it further enacted*, That no innholder, victualler, or retailer, shall suffer any revelling, riotous or disorderly conduct in his house, shop, or dependencies thereof, on penalty of five dollars, to be paid by the master or keeper of the said house or shop who shall suffer the same; and the penalty of two dollars to be paid by each person offending in any of the said particulars. And no innholder, victualler, or retailer, shall suffer any person to drink to drunkenness or excess in his or her house or shop, or suffer any minor (travellers excepted) or servant to sit drinking there, or to have any strong drink there, without special allowance of their respective parents, guardians or masters, on pain of forfeiting the sum of five dollars for every offence of that kind.

[\*588]

No innholder, &c. to suffer riot, or disturbance, or excessive drinking in his house,

[Ib. § 6, 7.]

under penalty.

SECT. 6. *Be it further enacted*, That the Selectmen in each town, and the Assessors in each plantation, shall cause to be posted up in the houses or shops of all innholders, victuallers and retailers as aforesaid, within such towns or plantations, a list of the names† of all persons reputed common drunkards (g), or common tipplers, or common game-

Common drunkards to be posted in public houses by selectmen, &c.

[Ib. § 16.]

[†See ch. 486, § 2, vol. 3, p. 279.]

(e) Any building used for the common purposes of an inn and situated within its curtilage, is a *dependency* of such inn. *Goff vs. Fowler*, 3 Pick. 800. See ante, note a, 8.

(f) *Com. vs. Balkam*, 8 Pick. 281. See ante, vol. 1, p. 103, § 5.

(g) It is made the duty of Sheriffs, Deputy Sheriffs, Constables and Tythingmen, to give Selectmen and Assessors information of all such persons. See ch. 278, § 3, vol. 3, p. 106.



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Penalty for suffering such persons to tipple or game in the house, &c.

Selectmen, &c. to forbid the sale of spirituous liquors for one year to excessive drinkers, &c.

[Ib. § 17.]

[\*589]

And may renew such prohibition.

Penalty for selling, &c. contrary to such prohibition.

Penalty for any person procuring spirituous liquors for drunkards or gamblers who are posted.

sters, mispending their time and estate in such houses, and every keeper of such house or shop, after notice given him as aforesaid, that shall be convicted of entertaining or suffering any of the persons in such list to drink, or tipple, or game, in his or her house or shop, or any of the dependencies thereof, or of selling them spiritous liquor as aforesaid, shall forfeit and pay the sum of five dollars.

SECT. 7. *Be it further enacted*, That whenever any person shall by idleness, or excessive drinking of spiritous liquors, so mispend, waste, or lessen his estate, as thereby either to expose himself or his family to want or indigent circumstances, or the town to which he belongs, to a charge or expense for the maintenance or support of him or his family, or shall so indulge himself in the use of spiritous liquors, as thereby greatly to injure his health, or endanger the loss thereof, such Selectmen or Assessors, shall, in writing under their hands, forbid all licensed persons, in their respective towns or plantations, to sell to any of the aforescribed mispenders of time and estate, any spiritous or strong liquors, in this act mentioned, for the space of one year,\* and shall in like manner forbid licensed persons of any other town or plantation to which such mispender may resort for the same.

And if any of the persons contained in the said prohibition shall not in the opinion of the said Selectmen or Assessors, or the major part of them have reformed during the said year ; in such case, the Selectmen of such town, or the Assessors of such plantations shall renew the prohibition in manner as aforesaid ; and if any licensed victualler, innholder, or retailer of spirituous or strong liquors, shall during any such prohibition, sell to any person contained therein, any spirituous liquors in this act mentioned, he shall forfeit and pay for each offence the sum of five dollars (h).


SECT. 8. *Be it further enacted*, That whenever the Selectmen of any town, or the Assessors of any plantation, shall have posted up in their town or plantation, the names of any common drunkards, common tipplers, or common game-

(h) See additional penalty, ch. 278, § 4, vol. 3, p. 106 ; also ch. 436, § 3, vol. 3, p. 279.



sters, or whenever they shall have forbidden licensed persons from selling to any mispenders of their time and estate, any spiritous or strong liquors agreeably to the directions of this act, it shall not be lawful for any person to purchase or procure, for and in behalf of such prohibited person, for his use, any spiritous or strong liquors ; and if any person or persons shall purchase, procure or sell, or shall cause to be purchased, procured or sold any spiritous or strong liquors to, or for the use of any such prohibited person during the continuance of such prohibition, as aforesaid, he shall forfeit and pay the sum of ten dollars.

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[Mass. Stat.  
Feb. 12, 1819,  
§ 1.]

SECT. 9. *Be it further enacted*, That any fine, forfeiture or penalty, not exceeding twenty dollars,† arising for any of the offences aforesaid, shall be recovered by action of debt, before any Justice of the Peace within the same county, where said offence was committed ; one moiety thereof to the use of the person who may sue therefor, and the other moiety thereof to the use of the town where such offence was committed ; and all fines, forfeitures and penalties exceeding twenty dollars, shall be recovered upon information or indictment, in any Court competent to try the same ; and the whole of such fines, forfeitures or penalties, shall be for the use of the county where the offence was committed. It shall be\* the duty of the several county attornies to file an information against each and every person, who, without being duly licensed shall presume to be a common victualler, innholder, or retailer, upon his obtaining evidence thereof, or he may lay the same before the Grand Jury of the county for their consideration. [Approved March 20, 1821.]

Penalties, and mode of recovering and appropriation.

[†See note c, § 1 of this ch.]

[\*590]

Additional Act, ch. 253, vol. 3, p. 82.

See also act passed March 4, 1833, ch. 77.



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## Chapter 134.

AN ACT to regulate the sale of Goods at Public Vendue.

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That no person unless he be licensed (a) by the major part of the Selectmen of the town to which he belongs, shall sell at public vendue or outcry, any goods or chattels whatsoever : and if any person, without such license, shall sell any goods or chattels at public vendue or outcry, he shall forfeit and pay a sum not exceeding six hundred dollars for each offence ; and the Selectmen or the major part of them, at a meeting had for that purpose, are hereby empowered, by a writing, under their hands, to license for the term of one year, any suitable person or persons to make sale of goods or chattels, in manner aforesaid ; and the Selectmen are hereby directed to record every license, they may so grant, in a book to be by them kept for that purpose.

No auctioneer to sell without license.

[Mass. Stat. June 16, 1795, § 1.]

Penalty.

Selectmen may license for one year.

If selectmen, unreasonably refuse, Court of Sessions may grant license.

[Mass. Stat. June 15, 1815.]

Proviso.

SECT. 2. *Be it further enacted*, That on application in writing of any person to the Selectmen of any town in this State, to be licensed to sell goods or chattels at public vendue, if the Selectmen shall unreasonably neglect or refuse, after such application, to license such person or persons, applying as aforesaid, it shall and may be lawful for such applicant or applicants, first giving ten days notice to the Selectmen, so neglecting, or refusing as aforesaid, to apply to the Court of Sessions for the county where such applicant or applicants reside ; which Court or a major part thereof, are hereby authorized and empowered, on hearing the parties, to license said applicant or applicants, if they shall adjudge the same just and reasonable : *Provided*, Such applicant give bonds to the Selectmen to pay all costs arising by the case being brought before the Court of Sessions.

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(a) 1. A license to sell goods by auction is of no force beyond the limits of the town to which the Selectmen and the auctioneer belonged at the time it was granted. *Waterhouse vs. Dorr*, 4 Glf. 888.

2. Such license must be granted, and signed at a meeting of the Selectmen, or the major part of them, had for that purpose. *Clark vs. Cushman*, 5 Mass. 505.



**SECT. 3.** *Be it further enacted,* That if any person or persons, thus licensed, shall receive any goods for sale at public vendue or outcry, of any servant or minor, knowing such person to be a servant or minor, or shall sell any of his own goods before sunrise, or after sunset (*b*) at public vendue or outcry, he shall forfeit and pay a sum not less than fifty dollars, nor more than one hundred and seventy dollars, for each offence: and every person thus licensed, shall keep a fair and particular account of all goods and chattels sold by him, as aforesaid, of whom the same were received and of the names of the persons to whom the same shall have been sold: *Provided,* That nothing in this act shall extend to sales made by Sheriffs, deputy Sheriffs, Coroners, Constables, Collectors of taxes, executors or administrators, or any other person who already is, or hereafter may be authorized or required by law to sell goods, chattels or lands at vendue or outcry.

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Penalty for receiving goods for sale, from a minor or servant.

[Mass. Stat. June 16, 1795, § 2.]

Sheriffs, Coroners, &c. not embraced in this act.

**SECT. 4.** *Be it further enacted,* That the tenants or occupants of any house or store, having the actual possession and control of the same, who shall knowingly permit or allow any person or persons, not being licensed as in the said act prescribed, to sell any goods or chattels at public vendue or outcry, in his said house or store or in any apartment or yard appurtenant to the same, shall forfeit and pay a sum not exceeding six hundred dollars, nor less than one hundred dollars.

Occupants of a house liable to fine for permitting sales therein by unlicensed auctioneers.

[Mass. Stat. June 14, 1814, § 1.]

**SECT. 5.** *Be it further enacted,* That any penalty, incurred as aforesaid, may be recovered in an action of debt, or by indictment or information, in any Court of Record competent to try the same; and to be appropriated to the use of the complainant. [Approved January 23, 1821.]

Penalties how recovered.

(*b*) In an action for the penalty for selling after sunset, the defendant is not estopped from denying that he has been regularly licensed as an auctioneer. *Clark vs. Cushman*, 5 Mass. 505.



SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, (b) That any persons twenty-one years of age, or upwards, desirous of incorporating themselves into a parish or religious society, may apply to any Justice of the Peace, in the county where the majority of such applicants reside, who shall issue his warrant to one of such applicants, directing him to notify them to meet at some suitable place, in the manner by this act provided, for the purpose of incorporating themselves into a parish or religious society. And such persons so assembled, may choose a Clerk, and such other parish officers, as they may think proper; and thereupon shall be, and hereby are declared to be a body politic, to be known by such name and style as they may see fit to adopt; and shall have all the powers and privileges incident by law to parishes and religious societies.

How parishes and religious societies may be incorporated.

May elect officers and become bodies politic, with parish powers.

(a) 1. This statute does not operate to dissolve territorial parishes; but leaves them as they stood before its enactment. *Osgood vs. Bradley*, 7 Glf. 411.

2. By the law as it stood prior to this statute, every person resident within the limits of a territorial parish, if otherwise qualified, was *ipso facto*, a member of the same, unless he was regularly united as a member to some poll-parish. And on ceasing to be a member of such poll-parish, he became forthwith a member of the territorial parish within which he resided, unless such secession was colorable and fraudulent. *Ib.* and *Lord vs. Chamberlain*, 2 Glf. 66. See onward, note j.

3. The sons of the members of territorial parishes, on coming of age and continuing to reside within the limits of the parish, become, *ipso facto*, members of the same. *Osgood vs. Bradley*, 7 Glf. 411.

4. So do persons who come to reside within the limits of a territorial parish, and do not belong to any other religious society. *Ib.*

5. A pew holder has an exclusive right to occupy his pew, and to maintain trespass, or a writ of entry against any one who disturbs him in his seat. But the parish may, when necessary, take down the house and rebuild on the same land, or may alter the form and shape of it, for the purpose of making it more convenient. If in doing this the pews are destroyed, the parish must provide an indemnity for the pew holders on just and equitable principles; it being a necessary condition of the property in a pew, that it shall be subject to the regulations of the parish, for useful purposes. *Gay vs. Baker*, 17 Mass. 435. See *Daniel vs. Wood, & al.* 1 Pick. 102.

(b) This section can have no relation to any parishes except poll-parishes. *Osgood vs. Bradley*, 7 Glf. 411.



**SECT. 2.** *Be it further enacted,* That every parish or religious society shall have power to take by gift, grant or purchase, any estate real or personal, until the clear annual income of such parish or society arising from such estate, shall amount to three thousand dollars ; and to give and grant or bargain and sell the same ; and shall have power to order and establish such regulations and by-laws for the management of their affairs as they may see fit : *Provided,* The same be not contrary to the laws of this State.

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May take and hold real estate of annual income 8,000 dollars.

**SECT. 3.** *Be it further enacted,* That the inhabitants of each parish or religious society may meet annually and at such other times as they may deem proper, in the town where the religious meetings of such parish or society are usually held, at such time and place as they shall be notified (c) to attend by the Assessors or standing committee of such parish or society, or by such other person as may have the warrant of such Assessors or committee therefor, such meetings to be notified seven days at least before the holding of the same, by written advertisements posted up at the principal outer door of the meeting-house or place of worship of such parish or society,\* or in such other mode as any parish or society may agree upon at any legal meeting of the same ; and being so assembled, may, by written ballot (d) or otherwise, elect a

Mode of calling parish or society meetings and proceedings.

[\*593]

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(c) 1. The legality of a town or parish meeting for the choice of officers is sufficiently proved by showing that it was notified and warned in due form, by those claiming to act as the legally qualified officers of the preceding year. *Tuttle vs. Carey*, 7 Glf. 426. See *Parish in Sutton vs. Cole*, 3 Pick. 232.

2. The return of the constable or collector on the back of the warrant for calling a town or parish meeting, is the only proper evidence that the meeting was legally warned. *Ib.*

3. And such return must show the manner in which the meeting was warned, or it will be bad. Nor can a defect in this particular be supplied by parol evidence. *Ib.*

4. But if the constable's return is thus defective, it does not follow that the proceedings of the inhabitants at the town or parish meeting are necessarily void, to all intents ; since in some cases the objection may be lost, on the ground of waiver or estoppel. *Ib.*

(d) 1. To entitle a man to vote in parish affairs it is not necessary that he should have been assessed in the last parish tax. *Osgood vs. Bradley*, 7 Glf. 411. But, see *Sparrow vs. Wood*, 16 Mass. 457.



**CH. 135.** Clerk, who shall be sworn or affirmed to the faithful discharge of his office, two or more Assessors, a Collector, Treasurer(e), and a standing committee, or such other officers as may be deemed proper for the convenient management of their concerns. And the Assessors of such parish or society shall have power to manage the prudential affairs thereof, when no other persons are appointed for that purpose.

Government of  
such meetings  
by moderator.

**SECT. 4.** *Be it further enacted,* That the Moderator of any meeting of any parish or religious society, shall have power to regulate and manage the business of such meeting, to preserve due order and decorum therein, to remove therefrom every person guilty of irregular and disorderly conduct and to administer the oath (f) of office to the Clerk. And when any vote declared by the Moderator, shall immediately be questioned by any person present, the Moderator shall make the same certain in such manner as a majority of the members present may desire.

**SECT. 5.** *Be it further enacted (g),* That when any five members of any parish or religious society shall signify in

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2. The election of the moderator of a parish meeting will be valid, though the meeting was called to order, and the votes were received and declared, by a private parishioner, who assumed that authority to himself. *Jones vs. Carey*, 6 Glf. 448.

(e) By ch. 296, vol. 3, p. 134, the treasurer may be appointed collector, with power to appoint deputies, pursuant to ch. 116, § 56, ante p. 593.

(f) *Colburn vs. Ellis and als.*, 5 Mass. 427.

(g) Where the record of a parish meeting shows it to have been called by the warrant of a justice of the peace, under St. 1786, [ch. 10,] § 2, and to have been regularly warned, no exception to the authority of the magistrate appearing on the record, neither a stranger, nor, *it seems*, an inhabitant of the parish, will be allowed to question the legality of the meeting, on the ground that the application to the magistrate was signed by fewer than ten persons, or that some of the signers were not qualified voters. But *it seems* that such irregularities, if excepted to by the inhabitants at the meeting, would render the proceedings of the meeting void. So if persons who are not qualified voters, do in a fact vote at a parish meeting without being challenged, no one can take advantage of such irregularity to vacate the proceedings. So a parish meeting called by persons acting as a committee of the parish, under color of a regular appointment, will be held legal, if no exception to their authority is taken at the meeting. *Inhbits. of First Parish in Sutton vs. Cole*, 3 Pick. 232.



writing their desire to have any article inserted in the warrant or notification for calling the next meeting thereof, it shall be the duty of the Assessors to insert the same accordingly. And if such Assessors unreasonably refuse to call a meeting, or any parish or religious society be destitute of Assessors, or other officers empowered to notify a meeting of the same, any Justice of the Peace within the county upon application in writing of five members of such parish or society, may issue his warrant to any suitable person therein, who may notify a meeting thereof accordingly; and where any parish or religious society shall not establish the method of calling meetings of the same, such meetings may be notified and called in the manner herein before provided for the calling of annual meetings.

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Justice of  
Peace may call  
meeting in cer-  
tain cases.

[Mass. Stat.  
June 28, 1786,  
§ 2.]

SECT. 6. *Be it further enacted (h)*, That every parish and religious society may at any legal meeting thereof, grant and vote such monies as they may judge necessary for the support of the public ministry of religion, for the building, repairing,\* enlarging or removing of houses of public worship and for all other necessary parish charges (i); and may assess the same on the polls and estates of the several members thereof, and cause the same to be collected, conforming to the laws providing for the assessment and collection of State taxes; and where any house of public worship belongs to the members of a parish or religious society, it shall be lawful for such parish or society, if they see cause, to assess any monies voted aforesaid, either wholly or in part upon the pews and seats of all individual proprietors therein: *Provided*,

May vote and  
assess monies  
and collect  
them,

[Ib. § 3.]

[\*594]

on pews in part  
or wholly.

Proviso.

(h) 1. Under the provisions of § 6, parish taxes can be assessed only on the polls and property of members of the parish. *Dall vs. Kimball*, 6 Glf. 171.

2. An assessment of taxes by parish assessors, upon a valuation made by assessors of a town, is illegal. *Granger vs. Parsons & al.* 2 Pick. 392.

(i) 1. Parishes have no authority to grant monies, except for settling ministers and building houses of public worship, and for purposes necessarily connected with those objects. *Bangs vs. Snow & al.* 1 Mass. 181.

2. By ch. 337, vol. 8, p. 180, assessors of taxes are responsible in their assessments, only for their own personal faithfulness and integrity. But see notes generally to ante ch. 116; and, particularly, note s to § 59 thereof, ante p. 594, which is applicable to parish assessors also.



## CH. 135.

Pews may be sold for taxes.

Mode of proceeding.

That such individual proprietors of pews and seats whether members of such society or not, may be present and vote in granting all sums to be assessed on such seats and pews in manner aforesaid. And if the taxes or any of them so assessed on said pews and seats shall remain unpaid for the space of six months after the assessment thereof, the Treasurer of such parish or religious society shall sell such pews and seats at public vendue to the highest bidder; first posting up a notification of such intended sale at the principal outer door of such house of public worship, at least three weeks before the time of sale, therein setting forth the numbers of the pews or seats, if any, and the amount of taxes due thereon; and shall make, execute and deliver to the purchaser sufficient deeds of conveyance of the same, and the monies arising from such sale, over and above the taxes and incidental reasonable charges, said Treasurer shall pay over to the former owners of the pews and seats so sold respectively, or their assigns on demand.

Each man's pew tax to be paid to his own designated teacher, unless, &c.

[Mass. Stat. June 18, 1811. Repealed, see ch. 180, of this volume.]

SECT. 7. *Be it further enacted*, That all monies paid by any person for the support of public worship, or of public teachers of religion by a tax on any pew or seat, shall, if such person require it, be paid over to such teacher of his own religious sect as he may designate, he leaving a written notice of such designation with the Clerk of such society on or before their annual meeting; unless such owner shall use such seat or pew by attending public worship himself, his family or other person occupying the same under him; and it shall be sufficient that such teacher be ordained and qualified agreeably to the usages of his particular sect or communion.

[\*595]

Mode of becoming a member of society, &c.

SECT. 8.\* *Be it further enacted*, That any person may become (j) a member of any parish or religious society now existing or hereafter to be created, by being accepted by the society of which he wishes to become a member, at a legal meeting of the same and giving notice thereof in writing to the Clerk of the society which he is about to leave; which

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(j) It seems by the above provision that no person can become a member of any religious society without first obtaining its consent. *Lord vs. Chamberlain*, 2 Glf. 67. See ante, note a, 2.



notice and the time of receiving the same, it shall be the duty of such Clerk to record. But every person ceasing to be a member of any parish or religious society shall be liable to be taxed for all monies raised by such parish or society before his ceasing to be a member thereof: *Provided*, That no person shall be compelled to join or be classed with any parish or religious society without his or her consent, and when any person shall choose to withdraw (*k*) from any parish or religious society, and shall leave a written notice thereof with the Clerk of such society, he or she shall be no longer liable to pay any part of any future expenses which may be incurred by such society.

CH. 135.

To pay taxes assessed on him by a parish, before leaving it.

Mode of withdrawing, &c.

SECT. 9. *Be it further enacted*, That the records (*l*) of every parish or religious society shall be free to the inspection of every member thereof, and of the Clerk of any other parish or religious society. And it shall be the duty of each Clerk to make and attest copies of record, upon request and reasonable compensation therefor.

Records of every parish to be open to inspection.

(*k*) 1. Ceasing to attend the religious and secular meetings of a parish, and attending the worship and supporting the minister of another denomination, for any length of time, will not alone amount to a renunciation of membership in the parish thus left; the only mode of withdrawing, without a change of residence, being by notice in writing as provided in § 8. *Jones vs. Carey*, 6 Glf. 448.

2. The liability of seceding members of a parish to contribute to the payment of its then existing debts, is created for the benefit of the parish alone. *Fernald vs. Lewis & al.* 6 Glf. 264.

3. Whether a seceding member, who does not join any other Society, is liable, by a fair construction of § 8, for any other and greater portion of the then existing debts of the parish, than one who does, is doubted. *Ib.*

4. The membership of a parishioner ceases, *ipso facto*, upon his filing a certificate pursuant to § 8. *Ib.*

5. The remedy for satisfaction of a judgment against a parish, by levy on the property of its members, is to be pursued against those only who were members at the time of the rendition of judgment, or at farthest, at the time of commencement of the action. *Ib.*

6. If all the members withdraw, and thus dissolve the corporation, whether its creditors may not have a remedy by action of the case, or by bill in Chancery, against those individuals on whom the liability would have remained had the corporation continued to exist,—*Quere.* *Ib.*

(*l*) Parish records as to grants of money may be contradicted and falsified by parol evidence. *Bangs vs. Snow & al.* 1 Mass. 181.



## CH. 135.

SECT. 10. *Be it further enacted (m),* That the minister

Ministers of all  
parishes may  
take estates in  
succession, &c.  
Mode of alien-  
ation by such  
ministers,

[Mass. Stat.  
Feb. 20, 1786,  
§ 1.]

and by deacons  
and elders in  
certain cases.

[\*596]

Mode of alien-  
ation by such.

Limitation as  
to amount of  
estate.

or ministers of every parish or religious society of every denomination (n) are, and shall be deemed capable of taking in succession any estate granted to the minister and his successors or for the use of the ministry, or of the poor of the church, and of prosecuting and defending all actions, petitions and processes touching the same, and no alienation by any minister, of any estate granted to the minister and his successors or for the use of the ministry shall be valid any longer than during such alienors continuing minister. And the deacons, elders, trustees, stewards, or other presiding officers of every church or religious society having by its usages no settled minister, shall be deemed capable of taking in succession any estate granted to them to the use of such church or of the poor thereof: and of prosecuting and defending all actions, petitions and processes touching the same. But no alienation of such estate\* by such deacons, elders, trustees, stewards, or presiding officers shall be valid any longer than during the alienors continuing in office: *Provided however,* That such deacons, elders, trustees, stewards, or presiding officers, may with the assent of the church or society alienate in fee any estate acquired by them or by such church or society by purchase; and no minister, deacons, elders, trustees, stewards or other presiding officers shall be deemed capable of taking any estate granted as aforesaid, so long as the clear annual income of any prior grants to such minister, deacons, elders, trustees, stewards, or presiding officers or their predecessors, or to the church, shall be and remain equal to the sum of three thousand dollars.

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(m) 1. The deacons of the Societies of Shakers are capable of taking and holding lands in succession within the meaning of § 10. *Anderson & al. vs. Brock, 3 Glf. 243.*

2. The members of a family or Society of Shakers are competent witnesses, without releases, in any suit, in which the deacons are parties, not directly concerning the common property. *Richardson vs. Freeman & al. 6 Glf. 57.*

(n) By ch. 299, vol. 3, p. 189, "the overseers of each monthly meeting, of the denomination of people called Quakers," are made a body corporate for holding similar grants, &c.



SECT. 11. *Be it further enacted*, That all (o) laws now in force in this State inconsistent with the provisions of this act, be and they are hereby repealed. [Approved March 13, 1821.]

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Additional Act, ch. 296, Vol. 3, p. 134.

See ch. 405, vol. 3, p. 255.

## Chapter 136.

AN ACT for recording Births and Deaths by the Clerks of towns.

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That it shall be the duty of every town Clerk within this State, to record all births and deaths which shall happen within his town and come to his knowledge, together with the time of such birth or death, and the names of his or her parents, if known, for the fees allowed by law, to be paid by his town.

Town Clerk to record births and deaths.

[Mass. Stat. Feb. 28, 1796, § 1.]

SECT. 2. *Be it further enacted*, That it shall be the duty of parents to give notice to the Clerk of the town in which they dwell, of all the births and deaths of their children; and it shall be the duty of every householder to give notice of every birth and death which may happen in his house; and of the eldest person next of kin to give such notice of the death of his kindred; and it shall be the duty of the master or keeper of any almshouse, workhouse or prison; and of the master or commander of any ship or vessel, to give notice of every birth and death which may happen in the house or vessel under his care or charge, to the Clerk of\* the town in which such event shall happen; and in case any person whose duty it shall be by virtue of this act, to give notice as aforesaid, shall neglect to perform the same for the space of six months after the birth or death shall happen, the person so neglecting shall pay a fine of one dollar, to be recovered with costs of suit, on complaint before any

Parents to give him notice of births and deaths,

[Ib. § 2.]

also each householder.

Each master of alms-house or ship or vessel.

[\*597]

Penalty for neglect.

(o) The statute of Massachusetts of Feb. 20, 1786, so far as the same is not inconsistent with this statute and with ch. 114 of the Laws of this State [ante p. 549] is in force in this State. *Osgood vs. Bradley*, 7 Glf. 411.



## Chapter 137.

AN ACT defining the general powers and duties of Manufacturing Corporations.

Manufacturing corporations may choose officers, &c.

[Mass. Stat. Mar. 3, 1809, § 1.]

and make bye-laws.

How first meetings may be called.

[Ib. § 2.]

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That all (a) corporations which may hereafter be established within this State, for the purpose of carrying on any kind of manufacture, or manufactures, shall have power from time to time, to choose a Clerk, who shall be sworn by a Justice of the Peace to the faithful discharge of his duty, and who shall record all votes of the corporation in a book, to be by him kept for that purpose; a Treasurer, who shall give bonds in such manner and in such sum as any such corporation shall direct, and such other directors, agents and factors, as shall be thought necessary and convenient for their regular government and to carry into effect the several objects for which any such corporation may be established; and to make and establish any rules and bye-laws for the regulation and government of said corporations, with reasonable penalties for the breach thereof, not exceeding the sum of twenty dollars, and the same at their pleasure to repeal and annul: *Provided*, That such rules and bye-laws shall not be repugnant to the Constitution and laws of this State.

SECT. 2. *Be it further enacted*, That a majority of the persons named in any act of incorporation may call the first meeting of the corporation, by giving notice of the time and

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(a) 1. An aggregate corporation may be liable in an action of assumpsit; the evidence in support of such action may be some express stipulation made by the agent or directors of the corporation; or the duty may arise on some act or request of such agency, within their authority, where no express stipulation is to be proved. *Hayden & al. vs. Middlesex Turnpike Corporation*, 10 Mass. 397. See next ch. § 2, note d.

2. See notes to marginal reference, § 81, p. 353, vol. 1.



place of meeting, in some public newspaper printed in the county where the manufactory shall be established, at least fourteen\* days before the time of the meeting; and if no paper is printed within the county, then public notice of the time and place of meeting shall be given as aforesaid, in a newspaper printed in some adjoining county (b).

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[\*598]

SECT. 3. *Be it further enacted*, That the property of all such corporations shall be divided into shares, and numbered in progressive order, beginning at number one; and every original member of such corporation shall have a certificate under the seal of the corporation, and signed by the Treasurer, certifying his property in such share as shall be expressed in the certificate.

Property of such corporations to be divided into shares and numbered.

[Ib. § 8.]

SECT. 4. *Be it further enacted*, That any share may be alienated by the proprietor thereof by a deed under his hand and seal, acknowledged before some Justice of the Peace, and recorded by the Clerk of the corporation in a book to be by him kept for that purpose; and any purchaser named in such deed so recorded, shall on producing the same to the Treasurer, and delivering up to him the former certificate, be entitled to a new certificate executed in form aforesaid.

Shares, how to be transferred.

[Ib. § 4.]

SECT. 5. *Be it further enacted*, That any such corporation may from time to time, at any legal meeting called for that purpose, assess† upon each share, such sum or sums of money, as shall be judged by such corporation necessary for raising a capital for the establishment and completion of the object of the incorporation, and for defraying the charges and expenses incident thereto, to be paid to their Treasurer at such time or times, and by such instalments as shall be directed by the corporation; and if the proprietor of any share or shares shall refuse or neglect (c) to pay any tax or

Corporation may assess money on the shares.

[†See ch. 385, vol. 3, p. 284.]

[Ib. § 5.]

Mode of enforcing payment by sale shares.

(b) It is not competent for a member of such corporation to object an irregularity in the warning of their first meeting, in an action against him for his subscription money, after they have been in fact organized and have transacted business several years. *Chester Glass Company vs. Dewey*, 16 Mass. 94.

(c) An action does not lie for an incorporated manufacturing company against a stockholder for the recovery of the assessments laid by the company. *Franklin Glass Company vs. White*, 14 Mass. 286. See notes to § 11 of the next chapter. Also, *Chester Glass Company vs. Dewey*, 16 Mass. 94.



**CH. 138.** assessment duly voted and agreed on by said corporation, for the term of thirty days after the time set for the payment thereof, the Treasurer of such corporation is hereby authorized to sell, at public vendue, the share or shares of such delinquent proprietor, sufficient to pay all taxes or assessments which may be then due from said proprietor, with all necessary and incidental charges; after having given public notice in some newspaper printed in the county where the manufactory is established, if any is printed therein, otherwise in some adjoining county, of the time and place of sale, with the sum due on each share, at least three weeks successively\* before the sale; and such sale shall be a legal transfer of the shares so sold to the purchaser, and when the purchaser shall produce a certificate of such sale from the Treasurer to the Clerk of the corporation, with the name of the purchaser, and the number of the share or shares sold, the same shall be entered by the Clerk on the books of the corporation; and such person shall be considered, to all intents and purposes, the proprietor thereof; and shall be entitled to a certificate in the form prescribed in the third section of this act.

Notice to be given.

[\*599]

Effect of sale.

Acts authorizing such corporations, to be considered public acts.

[Ib. § 7.]

**SECT. 6.** *Be it further enacted,* That all acts incorporating manufacturing companies, shall be deemed and taken to be public acts, and as such may be declared upon, and given in evidence in any Court of law, without specially pleading the same: *Provided always,* That the Legislature may from time to time, upon due notice to any corporation, make further provisions and regulations for the management of the business of the corporation, and for the government thereof, or wholly to repeal any act, or part thereof, establishing any corporation as shall be deemed expedient. [Approved March 8, 1821.]

Additional Act, ch. 221, Vol. 3, p. 50.

See ch. 494, Vol. 3, p. 340.

## Chapter 138.

AN ACT defining the general powers and duties of Turnpike Corporations.

**SECT. 1.** *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That no turn-



pike (a) corporation shall be created, except a committee shall have first been appointed by the Legislature, and viewed the rout proposed by the petitioners, who shall be at the expense thereof. And that all committees appointed for the purpose aforesaid, shall, before they proceed to view any proposed road, give public notice of the time and place of their meeting, by publishing the same in some newspaper printed in the county where said road is proposed to be laid, if any such paper is printed therein, and if not, in such other way as they may think will give general notice to all interested, and shall also give notice to one or more of the Selectmen of each town through which they propose to view, and of the\* time they shall make their report to the Legislature, that all persons may then appear and show cause, if any they have, against the prayer of the petition.

CH. 138.

Turnpike corporations not to be granted, until after a viewing committee. [Mass. Stat. Mar. 16, 1805, § 1.] Viewing committee to give notice, &c.

[\*600]

SECT. 2. *Be it further enacted*, That whenever any grant is made for a turnpike road, and application is made to the Court of Sessions within the county where said road is situated, said Court shall appoint a committee of five disinterested freeholders within the same county, at the expense of the corporation, who shall be invested with the same powers, observe the same rules, be under the same restrictions, perform the same duties, and make return of their doings, in the same manner as is provided by law for similar committees appointed by said Court for laying out public highways. And said corporation (b) shall be liable to pay all damages that may be estimated by said committee; saving to either party the right of trial by Jury (c) respecting damages

When turnpike is granted, Court of Sessions may appoint committee to lay it out.

[Ib. § 2.]

Corporation to pay damages estimated by said commit-

(a) 1. The public have only an easement in a turnpike road, and the owners of the soil may maintain trespass against an individual for ploughing up the land. *Robbins vs. Borman, & al.* 1 Pick. 122. See note a, 3, p. 605.

2. But the turnpike corporation may make any use of the land which is necessary for the enjoyment of its franchise; as for instance it may cause a dwelling house to be erected for the toll gatherer, trees to be cut down, a cellar and well to be dug, &c. on land over which the turnpike passes. *Tucker vs. Town*, 9 Pick. 109.

(b) Not the corporators. *Com. vs. Blue H. Turnpike*, 5 Mass. 422.

(c) Upon application for a jury to assess damages in such case, notice should be given to persons interested, to show cause why a warrant for summoning a jury ought not to be issued. *Central T. C. Petitioners*, 7 Pick. 13. See *Com. vs. Hall & al.* 8 Pick. 440.



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tee; saving to each party a right to jury, &c.

unless the corporation purchase the land.

[†Ante, p. 606.]

Width of such roads.

Where gates may be erected.

[Ib. § 3.]

After the road is made and approved by C. C. Com. Pleas, corporation may erect gates.

[Ib. § 4.]

[\*601]

Rates of toll.

only, according to law making provision for the recovery of damages arising from the laying out highways:† *Provided however*, That said corporation may purchase and hold lands, over which they may make their road; in every such case, the estimation of damages shall be omitted by said committee (d). And no turnpike road hereafter granted shall be less than four rods in width, and the travelled part of the same shall not be less than twenty-four feet in any part thereof.

SECT. 3. *Be it further enacted*, That no gate shall be erected by any turnpike corporation, on any county or town road before established; and no turnpike gate shall be erected across any turnpike road where full toll shall be demanded, except said gate be ten miles distant from any other turnpike gate, on the same road, unless the act granting the same road shall contain a different provision.

SECT. 4. *Be it further enacted*, That it shall be lawful for all turnpike corporations that may be established by law, whenever the road shall be sufficiently made, and so allowed and approved by the Justices of the Circuit Court of Common Pleas within said county where said road shall be situated; and they are hereby authorized to erect gates in such place or places as the said Justices shall direct; to demand and receive of each traveller or passenger at each of said\* gates, the following rates of toll, viz. For each coach, chariot, phaeton or other four wheel spring carriage, drawn by two horses, twenty-five cents; and if drawn by more than two horses, two cents for each additional horse; for every waggon drawn by two horses, ten cents; and if drawn by more than two, two cents for each additional horse; for every cart or waggon drawn by two oxen, ten cents; and if by more than two, twelve and a half cents; and if by more than four oxen or horses, two cents for each additional ox or horse; for every curricule, fifteen cents; for every chaise, chair, sulkey or other carriage for pleasure, drawn by one horse, twelve

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(d) A. agrees in writing with a turnpike corporation to let them have his land for the turnpike, they paying at the rate of 100 dollars per acre, making a wall, &c. and B. in behalf of the corporation engages to fulfil their part of the contract. This was held to be a contract to sell to the corporation a perpetual leasehold over the land; and B. was held to answer personally on the contract. *Tucker vs. Bass*, 5 Mass. 164. See ante, ch. 137, § 1, note a.



and a half cents each ; for every cart, waggon or truck drawn by one horse, six and a quarter of a cent each ; for every man and horse four cents ; for every sleigh or sled drawn by two oxen or horses, eight cents ; and if drawn by more than two oxen or horses, one cent for each additional ox or horse ; for every sleigh or sled drawn by one horse, four cents ; for all horses, mules or neat cattle led or driven, besides those in teams or carriages, one cent each ; for all sheep or swine, at the rate of three cents by the dozen : *Provided however,* That the corporation may if they see cause, commute the rates of toll with any person or persons or with any corporation, by taking of him or them a certain sum annually, to be mutually agreed on, in lieu of the toll aforesaid ; and carts or waggons having wheels, the felloes of which shall be six inches broad or more, shall be subject to pay only half the toll which carts or waggons otherwise constructed shall be liable to pay. And all turnpike corporations shall erect in some conspicuous place where the toll is collected, exposed to view, a sign board, with the rates of toll of all tollable articles, fairly and legibly written or printed in capital letters ; and whenever said corporation shall neglect so to do, they shall not be entitled to demand or receive any toll at the said gate.

Sign board to be erected, exhibiting such rates of toll.

[† *Nichols vs. Bertram*, 8 Pick. 842.]

SECT. 5. *Be it further enacted,* That if any person shall cut, break down or otherwise injure or destroy any turnpike gate, on any turnpike road ; or shall dig up or carry away any earth or gravel from such turnpike road, or in any other manner damage the same ; or shall forcibly pass (e), or attempt\* to pass such turnpike gate, without having first paid the legal toll, with an intent to avoid the same, such person shall forfeit and pay a sum not exceeding fifty dollars, nor less than five dollars, to be recovered by the Treasurer of the corporation to their use, in an action of trespass. And if any person, with his or her horse, team or cattle, shall turn out of such road to pass any turnpike gate with intent to avoid paying the toll, and again enter on the said road, such person shall

Penalty for destroying or injuring gates or road ; or forcibly passing, &c. gates without paying toll. [lb. § 5.]


[\*602]

Penalty for fraudulently avoiding a gate.

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(e) Passing in a vehicle swiftly by a turnpike gate and not stopping when called after to pay the toll, is a forcible passing within the meaning of the statute respecting turnpike roads. *Nichols vs. Bertram & al.* 8 Pick. 842.



**CH. 138.**  forfeit and pay treble the toll which could have been payable at such gate, to be recovered by the Treasurer of said corporation to their use in an action of trespass on the case. *Provided however,* That nothing in this act shall extend to entitle any turnpike corporation hereafter established, to demand or receive toll from any person that shall be passing on foot or with his horse or carriage, to or from his usual place of public worship ; or from any person passing on military duty ; or from any person residing in the town where the gate may be placed, unless they are going or returning from beyond the limits of said town ; or from any person going to or from any grist mill, or on the common and ordinary business of family concerns (*f*).

Certain persons exempted from toll.

Penalty for giving a false answer to a toll gatherer, when claiming exemption.

[Mass. Stat. Feb. 24, 1814, § 1.]

Penalty for demanding more than legal toll.

[\*603]

**SECT. 6.** *Be it further enacted,* That every traveller being about to pass any turnpike gate or toll bridge within this State, and claiming to be exempted by law from the payment of toll, shall, if required by a toll gatherer, first deliver to him his name and place of abode ; and whoever shall for the purpose of avoiding the payment of toll at any such gate or bridge, wilfully give a false account to a toll gatherer of his name or place of abode, and thereby pass the gate, toll free ; shall forfeit and pay to the use of such corporation, for every such offence, the sum of ten dollars, to be recovered by the Treasurer of said corporation by an action of debt.

**SECT. 7.** *Be it further enacted,* That if any turnpike corporation, their toll gatherer, or others in their employ, shall demand or receive more toll than is by law established, the said corporation shall forfeit and pay a sum not exceeding ten dollars, nor less than two dollars ; to be recovered before any Justice of the Peace within the county where the offence is committed,\* by the person injured, delayed or defrauded, to his or her use, in a special action of the case ; and all writs against any turnpike corporation shall be served on the

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(*f*) A person residing in a town where a turnpike gate is placed, who is exempted from toll when going “ on the common and ordinary business of family concerns within the said town,” is not, by virtue of such exemption, entitled to pass the gate free of toll, when going into another town upon such concerns. *Kent vs. Newburyport Turnpike Corporation*, 4 Pick. 388. See *Medford Turnpike Corporation vs. Torrey*, 2 Pick. 538.



Treasurer of said corporation, or on some individual member thereof, living in the county where the offence shall be committed, by leaving a true and an attested copy of the same with the said Treasurer or individual member, at least fourteen days before the day of trial. And the said Treasurer or individual member shall be allowed to defend the same suit in behalf of said corporation; and the said corporation shall be liable to pay all damages which may happen to any person from whom toll is demandable (*g*), for any damages which shall arise from defect of bridges or want of repair of said turnpike road; and also liable to presentment by a Grand Jury, for not keeping the same in good repair.

CH. 138.

Mode of serving process on such corporations.

Corporation liable in damages,

and to indictment for neglect to repair.

SECT. 8. *Be it further enacted*, That if any turnpike or bridge corporation, or any agent thereof, shall unreasonably delay or hinder any person driving any cart or waggon, sleigh or carriage, from passing any turnpike gate or toll bridge, such turnpike or bridge corporation, shall forfeit and pay to such person so delayed or hindered a sum not less than two dollars, nor more than twenty dollars, to be recovered by such person by a special action of the case.

Penalty for hindering or delaying travellers at toll gate.

[Mass. Stat. Feb. 24, 1814, § 6.]

SECT. 9. *Be it further enacted*, That where any turnpike road hereafter established shall intersect any former public highway, it shall be the duty of the proprietors of such turnpike so to construct their road, that it shall be convenient and feasible for travellers to pass from such former public highway on to such turnpike.

Where turnpike intersects another road, how to be made.

SECT. 10. *Be it further enacted* That the shares in all turnpike corporations shall be taken, deemed and considered to be personal estate, to all intents and purposes; and may be transferable, and the mode of transferring the said shares shall be by deed, acknowledged before any Justice of the

Shares in turnpikes to be personal estate. How transferable. [Mass. Stat. Mar. 16, 1805.] § 8.]

(*g*) 1. This provision must operate as a limitation of the right of action to such persons as are liable for toll, and of course a deprivation of the common law right of action from those who are exempt from toll. *Williams vs. Hingham Turnpike Corporation*, 4 Pick. 347.

2. The declaration in such action should state that the plaintiff is a person from whom toll is demandable; and the want of such an averment, or allegations from which that fact may be inferred, is not cured by verdict. *Ib.*



CH. 138. Peace, and recorded by the Clerk of said corporation, in a book kept for that purpose.

When a proprietor neglects to pay assessments, what proceedings to be had.

[\*604]

[Ib. § 10.]

SECT. 11. *Be it further enacted*, That whenever any proprietor of a share or shares in any turnpike corporation hereafter established, shall neglect or refuse to pay any tax or assessment duly voted and agreed on by such corporation,\* to their treasury, within sixty days after the time set for the payment thereof, the Treasurer of said corporation is hereby authorized to sell at public vendue the share or shares of such delinquent proprietor sufficient to defray the said tax or assessment, and all necessary and incidental charges, after having given public notice in some newspaper printed in the county where the road lies, if any is printed therein; otherwise in some public paper printed in an adjoining county; with the sum due on each share, and the time and place of sale, three weeks successively, at least, before the sale. And such sale shall be a legal transfer of the shares so sold, to the purchaser; and on the purchaser producing a certificate of such sale from the Treasurer to the Clerk of said corporation, with the name of such purchaser, together with the number of the share or shares so sold, shall be by the Clerk entered on the books of the corporation; and such person shall be considered to all intents and purposes, the proprietor thereof; and the overplus, if any there be, shall be paid by the Treasurer, on demand, to the person whose share or shares were so sold (*h*).

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(*h*) 1. When the members of a Turnpike Corporation have expressly agreed to pay the assessments that may be made by the corporation, an action lies for the corporation to recover the assessments; but if there be no such agreement, the only recovery of the corporation is by a sale of the shares of the delinquent members. *Worcester Turnpike Corporation vs. Willard*, 5 Mass. 80; *A. & M. Turnpike Corporation vs. Gould*, 6 Mass. 40; *Taunton & S. B. Turnpike Corporation vs. Whiting*, 10 Mass. 327. In *Essex Turnpike Corporation vs. Collins*, 8 Mass. 292, it was held, that no action lies for a turnpike corporation, for the assessments against one who had subscribed a promise to take shares and to pay the assessments thereof, after a part of the turnpike was completed, where there is no act of the corporation either previously authorizing, or afterwards ratifying his subscription. In *Middlesex Turnpike Corporation vs. Swan*, 10 Mass. 384, where one engaged to take shares, and to pay all assessments, and afterwards the course of the road was altered by law; it was holden that he was not



**SECT. 12.** *Be it further enacted,* That all loaded carts or waggon, passing on any turnpike road within this State, carrying more than forty-five hundred gross weight, shall be drawn on wheels having each a felloe not less than three and an half inches wide; and if any person or persons shall pass on any turnpike road in this State, with a cart or waggon loaded as aforesaid, with narrower felloes than is above provided, he or they shall pay to such turnpike corporation, three times the legal toll for such loaded cart or waggon. And it shall be the duty of any person or persons driving or having the care of a loaded cart or waggon, passing on any turnpike road as aforesaid, upon the request of the toll gatherer to give a true account of the weight of his load, and also his name and place of abode; and if he shall refuse to give, or wilfully misrepresent the weight of his load, or shall give a false account of his name or place of abode, with intent to defraud any turnpike corporation, he shall forfeit and pay to the use of such turnpike corporation, the sum of ten dollars for every such offence, to be recovered by the Treasurer of such turnpike corporation by action of debt.

**CH. 138.**  
Description of wheels to be used on turnpikes, with certain loads. [Mass. Stat. Feb. 24, 1814, § 8.] Penalty for violating this provision.

Teamsters to give true account of themselves and the weight of their loads;

under penalty, &c.

**SECT. 13.\*** *Be it further enacted,* That if any person or persons shall open or make any road or passway, leading from any turnpike road within this State, and reunite said road or passway with the same turnpike road, or any other road connected therewith, with an intent and for the purpose of avoiding, or aiding others to avoid, any gate on such turnpike road, he or they shall forfeit and pay to the use of such turnpike corporation, so intended to be injured, a sum not less than two hundred dollars, nor more than one thousand dollars, to be recovered by the Treasurer of such turnpike corpora-

[\*605]  
Penalty for making roads connected with turnpike so as to avoid toll gates, &c.

[Ib. § 2.]

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bound by his engagements to pay the assessments, though he had acted in several offices of the corporation, and had, as one of the directors thereof, petitioned the legislature for the alteration.

2. A member's declaration in public corporation meeting, that he would spend half of his estate, in reference to the making of the proposed road, is no evidence of an express promise to pay the assessments on his share, so as to sustain an action against him for the assessments. *A. & M. Turnpike Corporation vs. Hay*, 7 Mass. 103. So if one simply engages to become a proprietor of a certain number of shares, without promising to pay assessments, the only remedy of the corporation is, by sale of the shares. *N. B. & B. Turnpike Corporation vs. Adams*, 8 Mass. 141.



## CH. 138.

Proviso.

Penalty for driving more than a certain number of cattle or horses over bridges, &c. at once;

[Ib. § 4]

or loaded teams beyond a certain weight.

Penalty for chaining wheels, &c. without an iron shoe under them, &c.

[Ib. § 5.]

tion in an action of trespass on the case: *Provided however,* That nothing in this section contained shall be construed to extend to the opening or making of any county road.

SECT. 14. *Be it further enacted,* That if any owner or person having the care of any drove of neat cattle or horses, and driving the same over any turnpike bridge, or over any toll bridge within this State, shall permit more than twenty neat cattle or horses to be on any such bridge which shall be more than fifty feet in length from one abutment, pier or trussel part to another, at one and the same time, without the consent of the toll gatherer or agent of said corporation; or if any owner or person shall drive or transport over any such bridge without the consent of the toll gatherer or agent thereof, any loaded cart or waggon, or other carriage, the weight whereof shall exceed forty-five hundred gross weight, exclusive of the team and carriage, and shall thereby break down or injure such bridge, such person or persons, owner or owners, shall not recover any damages of the corporation owning such bridge (i).

SECT. 15. *Be it further enacted,* That if any person driving or having the care of any loaded cart or waggon, passing on any turnpike road, within this State, shall lock, chain or fasten any of the wheels of such loaded cart or waggon, without putting under such locked, chained or fastened wheel, an iron shoe, not less than six inches wide and twelve inches long, such person driving or having the care of such loaded cart or waggon, shall for every offence forfeit and pay to such turnpike corporation, a sum not less than two dollars,

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(i) In an action against a turnpike corporation for damage done to merchandise through the insufficiency of a bridge, and which was more than fifty feet in length from one abutment to another, the driver of the wagon containing the merchandise, which weighed more than forty-five hundreds, testified, that he did not inform any toll gatherer that his load weighed more than forty-five hundreds; that he frequently drove loaded wagons over the road, which usually exceeded that weight, but that he never informed any toll gatherer of it, not having been inquired of as to the weight. It was *held*, that the evidence would not authorize the jury to infer the consent of a toll gatherer to his passing over the bridge, which is required by statute 1813, ch. 161, § 4, in such case, in order to render the corporation liable for damages *Pomeroy vs. Fifth Mass. Turnpike Corporation*, 10 Pick. 35.



nor more than twenty dollars, to be recovered by the Treasurer\* of such turnpike corporation, in an action of trespass on the case. CH. 138.  
[\*606]

SECT. 16. *Be it further enacted*, That the first meeting of all turnpike corporations hereafter established, shall be held at such time and place as shall be agreed on by a major part of the persons to whom the grant is made, for the purpose of choosing a Clerk, who shall be sworn to the faithful discharge of the duties of his office, and such other officers as may be agreed on by said corporation; and may then or at any subsequent meeting, establish such rules and regulations, as shall be judged necessary for the well ordering of the affairs thereof: *Provided*, That no such rules and regulations shall, in any manner, be repugnant to the Constitution and laws of this State; and that said first meeting shall be notified, by publishing the same in some newspaper printed nearest to where the said road lies, at least two weeks before the said meeting.

First meeting of such corporation to be called by a major part of the grantees.  
[Mass. Stat. Mar. 16, 1806, § 12.]  
May make rules, &c. not repugnant to constitution, &c.

SECT. 17. *Be it further enacted*, That whenever the directors of any turnpike corporation heretofore established or which may hereafter be established, by law, shall wish to remove a gate or gates, by such corporation then duly erected on the turnpike road of such corporation, it shall and may be lawful for such directors, or a majority of them, to petition the Circuit Court of Common Pleas, to be holden within and for the county where such gate or gates may be erected praying for the removal of such gate or gates, and stating the reasons therefor; and thereupon it shall and may be lawful for the said Court to nominate and appoint a committee of three disinterested and sufficient freeholders, inhabitants of said county, whose duty it shall be after being duly sworn to the faithful discharge of their trust, at the expense of the corporation, whose gate or gates are intended to be removed, to give notice to all persons interested, of their appointment, and the time and place of meeting, for the purpose of attending to the business of their commission, by advertising the same in such newspaper as the said Court may order, ten days, at least before the time appointed for such meeting; and also at the said time appointed as aforesaid, to repair to

C. Court Common Pleas, may, on petition remove gates.  
[Ib. § 13.]  
Proceedings to be had in such cases.



CH. 133. the gate or gates mentioned\* in such petition ; and after hearing all parties interested, to determine whether the said gate or gates shall be removed, as prayed for, and report their said determination as soon as may be to the same Court ; who are authorized, if they should deem it expedient, to order said gates to be removed and located according to the report of such committee.

[\*807]

C. Courts of Common Pleas may in certain cases order gates to be opened after notice to corporation.

[Ib. § 14.]

No toll to be taken till such order is revoked.

Turnpike corporations not to open road and expose enclosures, without consent of owners, until damages are paid such owners.

Proviso.

SECT. 18. *Be it further enacted*, That whenever any turnpike road shall be suffered to be out of repair, the Justices of the Circuit Court of Common Pleas, within and for the county where the same road may lie, or a major part of them, or a committee to be appointed for that purpose by said Justices, are hereby authorized to order the gate or gates of such corporation to be set open ; said Justices or their committee having previously notified the Clerk of such corporation, of complaint having been made of the badness of such road, at least ten days previous to ordering such gate or gates to be set open, and immediately upon leaving such order in writing under the hands of said Justices or their committee, with the Clerk of such corporation, the said gate or gates shall be opened, and no toll shall be legally demandable thereat, until the said Justices or their committee shall grant a counter order.

SECT. 19. *Be it further enacted*, That it shall not be lawful for any turnpike corporation hereafter granted, without the consent of the owner or owners of any real estate, over which the road granted to such corporation shall pass, to throw open any fences or enclosures upon the same, or remove any buildings, or cut down any trees thereon standing, or make such road, or in any way injure the property of any owner or possessor of such real estate, until the damage done by the passing of such road over said real estate, shall have been first duly ascertained by the committee who may by law be authorized to assess the same ; and such damages, so ascertained, shall have been paid or tendered to the person or persons entitled to receive the same : *Provided however*, That nothing in this act contained, shall be construed to prevent any turnpike corporation, their agents or servants from entering on any lands, over which any such road may pass,



for the purpose of surveying\* or laying out the same. And whenever a committee or Jury shall be appointed by the Court of Sessions for the purpose of estimating whether sufficient or insufficient damages have been allowed, in laying out a turnpike road, the turnpike corporation being a party, shall be liable to costs in those cases, in like manner as counties are liable in laying out county roads.

CH. 138.

[\*608]

Corporations liable to costs in certain cases like counties.

SECT. 20. *Be it further enacted,* That whenever any turnpike road, in whole or in part, shall be discontinued, the land over which such discontinued turnpike was laid, shall revert in the person or persons, their heirs and assigns who were owners thereof at the time such land was taken or purchased for the purpose of making said turnpike, any conveyance of said land by deed to said corporation notwithstanding.

When a turnpike is discontinued land to revert to the person owning it at the time it was taken, &c.

[Mass. Stat. Mar. 16, 1805, § 15.]

SECT. 21. *Be it further enacted,* That every turnpike corporation hereafter established, shall, within six months from the time of erecting their gates, lodge in the Secretary's office an account of the expenses thereof; and each corporation shall annually, in the month of January, exhibit to the Governor and Council a true account of the income or dividends arising from said toll, with their necessary annual disbursements on the said road; and the books of all corporations shall at all times be subject to the inspection of the Governor and Council and of the Legislature.

Corporation to lodge in the secretary's office account of expense, and annual account of dividends and imbursements.

[Ib. § 9.]

SECT. 22. *Be it further enacted,* That the Legislature may dissolve any corporation hereafter established, after the expiration of twenty years, or sooner if it shall appear to their satisfaction that the income of said road shall have compensated such corporation for all money they may have expended, in purchasing lands for said road, and in making, repairing, and taking care of the same, together with twelve per centum by the year; and thereupon the property of said road shall be vested in the State and be at the disposal of the Legislature: *Provided however,* That if any corporation granted as aforesaid, shall neglect to complete the road within five years from the date of the grant, the same shall be void.

Legislature may dissolve corporations in certain cases.

[Mass. Stat. Mar. 16, 1805, § 11.]

Grants void, if objects not completed within 5 years.

[Approved February 15, 1821.]



Powers of insurance companies.

[Mass. Stat. Feb. 16, 1818, § 1.]

Form of policy.

Adjustment of losses by directors, binding on company.

Dividends—how and when to be made, and on what principles.

[Ib. § 2.]

Responsibility of stockholders in case.

Subsequent dividend not to be made, until, &c.

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That all insurance companies which shall hereafter be incorporated in this State, shall have power and authority to make insurances on vessels, freight, money, goods, and effects, and against captivity of persons, and on the life of any person and in cases of money lent upon bottomry and respondentia, and to fix the premiums and terms of payment; and all policies of insurance by them made, shall be subscribed by the president, or in case of his death, sickness, inability, or absence, by any two of the directors, and countersigned by the secretary of such corporation, and shall be binding and obligatory upon the said companies, and have the like effect and force, as if under the seal of the said companies; and all losses duly arising under any policy so subscribed, may be adjusted and settled by the president and board of directors, and the same shall be binding on the said companies respectively.

SECT. 2. *Be it further enacted,* That it shall be the duty of the directors of all such companies, at such times as the charter or bye-laws of said companies shall prescribe, to make dividends of so much of the interest arising from the capital stock and the profits of said companies as to them shall appear advisable; but the monies received and notes taken for premiums of risks, which shall be undetermined and outstanding at the time of making such dividends, shall not be considered as parts of the profits of said companies; and in case of any loss or losses, whereby the capital stock of the said companies shall be lessened before all the instalments are paid in, each proprietor or stockholder's estate shall be held accountable for the instalments that may remain unpaid on his share or shares, at the time of such loss or losses taking place. And no subsequent dividend shall be made until the sum arising from the profits of the business of the said companies, equal to such diminution, shall have been added to the capital; and that once in every three years,\* and oftener if required, by a majority of the votes of



the stockholders, the directors shall lay before the stockholders, at a general meeting, an exact and particular statement of the profits, if any there be, after deducting losses and dividends.

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**SECT. 3.** *Be it further enacted,* That the said companies shall not directly nor indirectly deal or trade in buying or selling any goods, wares, or merchandize, or commodities whatever ; and the capital stock of said companies, collected at each instalment, shall within six months, be invested, either in the funded debt of the United States, or of this State or in the stock of the United States Bank, or of any incorporated Bank in this State, in either or all of them, and in such proportion as may be most for the interest of said companies, at the discretion of the president and directors of said companies ; or of such other person or persons as said companies shall for such purpose at any meeting appoint : *Provided however,* That the president and directors of said companies, and of all other companies of insurance heretofore incorporated, shall have power to loan to any citizen of this State, any portion of their capital stock, not exceeding one half, on respondentia or bottomry : *Provided also,* That the sum loaned, on any one bottom at one time, including the sum insured in any other way upon the same bottom, shall not exceed ten per centum upon the capital stock of such companies ; nor shall the same be loaned, but with the assent of three fourths of the directors of such companies ; and such loans, together with the assent aforesaid, shall be entered at large in the records of said companies ; and shall be laid before the stockholders at their meeting next following the said loan ; and it shall be in the power of the directors of said companies, in case they shall deem it more for the interest of the Stockholders in said companies than any of the investments above described, to loan any portion of their capital stock aforesaid, not exceeding two thirds of the whole amount, to any person or persons within this State either on mortgage of real estate within this State, or on pledges of the public stocks of the United States, or of the Bank of the United States, or of any other Bank incorporated in this State.

Insurance companies not to engage in any merchandise.

Capital stock, how to be invested

[Ib. § 3.]

May loan one half on respondentia or bottomry.

Sum loaned on one bottom not to exceed ten per cent. of capital, &c.

Such loans to be laid before stockholders.

In certain cases may loan for security on real estate or stocks to extent of 2-3 capital.



## CH. 139.

SECT. 4\*. *Be it further enacted,* That in case of any

**[\*611]**  
In certain cases directors liable jointly and severally for losses.

[Ib. § 4.]

President and directors to publish yearly in newspapers, amount of their stock, &c.

[Ib. § 5.]

Not to take on any one risk more than 10 per cent. of capital.

Shall make statement of their affairs to Legislature when required.

[Ib. § 6.]

No insurance company to be incorporated with capital less than 100,000 dollars.

Individual stockholders liable in case, &c.

**[\*612]**  
Companies may insure

loss or losses taking place, which shall be equal to the amount of the capital stock of the said companies, and the president or directors, after knowing of said loss or losses taking place, shall subscribe to any policy of insurance, their estate jointly and severally shall be accountable for the amount of any and every loss which shall take place under policies so subscribed.

SECT. 5. *Be it further enacted,* That the president and directors of such companies shall, previous to subscribing to any policy, and once in every year after, publish in two of the newspapers printed within this State, one of which at least shall be in the town of Portland, the amount of their stock, exclusive of premium notes and profits of their business ; against what risks they mean to insure, and the largest sum they will take on any one risk : *Provided,* No insurance company shall ever take on any one risk a sum exceeding ten per centum of their capital stock actually paid in.

SECT. 6. *Be it further enacted,* That the president and directors of any insurance company within this State, shall when and as often as required by the Legislature thereof, lay before them a statement of the affairs and situation of their respective companies, and submit to an examination of the same under oath.

SECT. 7. *Be it further enacted,* That no insurance company, shall hereafter be incorporated in this State, with a capital of less than one hundred thousand dollars, to be paid in at such periods, and in such payments, as in their respective acts of incorporation shall be particularly pointed out. And whenever it shall so happen that by losses on policies or otherwise, their corporate property shall be insufficient to pay all their debts, the individual stockholders shall be liable in their private capacity, in case the whole amount of the capital stock is not paid in, to any creditor of said company, to the amount that may be due from said stockholders on their shares ; and shall be liable to be sued therefor severally or jointly in a special action of the case, by any such creditor as aforesaid.

SECT. 8.\* *Be it further enacted,* That all insurance companies, which may hereafter be incorporated, shall be author-



ized, whether particularly expressed in their acts of incorporation or not, to make insurance against fire, on any dwelling houses or other buildings; and on merchandize or other property within the United States; on such terms and conditions as may be agreed upon by the parties: *Provided*, No sum shall be insured on any one risk against fire, exceeding ten per cent. of the capital stock actually paid in.

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against fire,  
&c.

[Mass. Stat.  
Feb. 21, 1820.]  
But on no risk  
more than 10  
per cent. of  
capital.

SECT. 9. *Be it further enacted*, That in addition to the mode, which may be pointed out in the charter of any insurance company, which is or may be incorporated, for calling meetings of the stockholders, it shall be the duty of the secretary at any time, on the application in writing of the proprietors of twenty per centum of the capital stock, to call a meeting of the stockholders to be holden at such time and place, and for the purposes mentioned in such application, by giving notice of the same, as provided in the act incorporating such company for giving notice of meetings. [Approved February 24, 1821.]

Meetings of  
stockholders  
how to be call-  
ed.

[Mass. Stat.  
June 19, 1819.]

See ch. 402, vol. 3, p. 252, and ch. 486, ib. p. 334.

## Chapter 140.

AN ACT enabling Proprietors of Aqueducts to manage the same.

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That when any number of persons shall, by writing associate and become proprietors of any aqueduct, or of any funds raised for making and constructing the same, for the purpose of conveying fresh water by subterraneous or other pipes, into any town or place within this State; it shall be lawful for the proprietors of a major part of the shares, to apply, in writing, to some Justice of the Peace for the county in which the said aqueduct may be, or is proposed to be placed; when it shall be or proposed to be placed so as to extend into several counties, application may be made to a Justice of the Peace of either of such counties, stating in such written application the name and

Meeting of pro-  
prietors, how  
to be called.

[Mass. Stat.  
Feb. 21, 1799,  
§ 1.]



## CH. 140.

[\*613]

style of their association, the objects of their proposed meeting and requesting such Justice to issue\* his warrant to some one of the proprietors so applying, directing him to call such meeting: And such Justice is hereby authorized to issue his warrant accordingly, therein stating the time and place, and objects of the said meeting. And such proprietors shall notify and warn such meeting, by posting up the said warrant or a true copy thereof, with his notice, seven days at least before the said meeting, in some public place in the town and towns in which the said aqueduct may be or is proposed to be placed.

Proprietors  
thus assembled  
to be corpora-  
tion.

[Ib. § 2.]

May agree on  
mode of calling  
future meet-  
ings.

May choose  
clerk.

[Ib. § 3.]

Who must be  
sworn.

May choose di-  
rectors,

who may as-  
sess taxes on  
the shares,

and sell them  
at public auc-  
tion

SECT. 2. *Be it further enacted*, That the proprietors of any such aqueduct or fund, duly met and assembled in pursuance of any such warrant, and their successors, shall be a corporation and body politic, by the name and style aforesaid; and at such meeting of said proprietors, or of any number of them, they shall have power to agree upon the method of calling future meetings of the corporation.

SECT. 3. *Be it further enacted*, That at any legal meeting of said proprietors, or of any number of them, they shall have power to choose a Clerk, whose duty it shall be fairly and truly to enter and record, in a book or books to be provided and kept for that purpose, this act and all rules, by-laws, votes and proceedings of such corporation; which book or books shall at all times be subject to the inspection of any person appointed for that purpose by the Legislature. And the said Clerk shall be sworn to the faithful discharge of the duties of his office; and at any such meeting the said proprietors or any number of them duly met as aforesaid, shall have power to elect a Moderator, and any such number of directors to manage the prudential business of said corporation, as to them may appear expedient; and such directors, or a major part of them, are hereby authorized from time to time to assess such taxes on the proprietors of the shares in such aqueduct, or in the funds which may be raised for making and constructing such aqueduct, as they shall find necessary; and on the neglect or refusal of any proprietor to pay such tax, to sell at public vendue so many of his or her shares as will be sufficient to pay such taxes, with necessary intervening charges; first advertising the sale of such share or shares



in some newspaper printed in the county, or by posting up notifications thereof\* in some public places in the town and towns wherein such aqueduct may be, or is proposed to be placed, twenty days at least previous to such sale; and the overplus monies (if any there may be) arising from such sale, shall be paid to the owner or owners of the share or shares so sold. And the said proprietors, or any number of them duly met as aforesaid, may, at any of their meetings, elect any other officer or officers, or act upon any other thing necessary for carrying into effect the objects of their institution: *Provided*, That the subject matter thereof be expressed in the warrant or notification for such meeting.

CH. 140.

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[+614]  
after 20 days' notice.

May choose other officers.

SECT. 4. *Be it further enacted*, That in all meetings of such proprietors, each proprietor shall be entitled to one vote for each and every share he or she may hold in such aqueduct or fund, and they are also hereby respectively empowered to depute and appoint any other person to appear and vote for him or them in such meetings; the appointment to be in writing, signed by the person or persons to be represented, and filed with, or recorded by the Clerk of such corporation.

Each proprietor entitled to one vote for each share, and to vote by proxy.

[Ib. § 4.]

SECT. 5. *Be it further enacted*, That the said proprietors, or any number of them, duly met as aforesaid, may at any of their meetings, enjoin and order fines and penalties, for the breach of any bye-law of such corporation, not exceeding thirty dollars for any one breach.

Proprietors may order fines and penalties for breach of their laws.

[Ib. § 5.]

SECT. 6. *Be it further enacted*, That any such corporation shall have power to purchase, take and hold any real estate necessary for the purpose of their institution: *Provided*, That the real estate which any one aqueduct corporation may hold, shall not exceed thirty thousand dollars in value. And all such real estate shall during the continuance of such corporation, be deemed and considered, to all intents and purposes, as personal estate, and as such, with the other interest and estate in such propriety, shall be transferable by such mode of transfer as such corporations, at any of their meetings, shall agree on and determine: *Provided, however*, That the transfer shall be in writing, and recorded by the Clerk of the corporation in the book or books aforesaid within three months next after such transfer shall be made.

Corporation may take and hold real estate

[Ib. § 6.]

not exceeding 30,000 dollars,


and to be deemed personal estate.

Mode of transfer.



## CH. 140.

SECT. 7.\* *Be it further enacted,* That such proprietors or

  
 [\*615]  
 May, by leave  
 of selectmen,  
 dig up roads,  
 streets, &c.  
 to lay pipes.

[Ib. § 7.]

Not obstruct-  
 ing travellers.

Clerk to keep  
 a record of the  
 names and  
 shares of all the  
 proprietors.

[Ib. § 8.]

In case of sale  
 of a share, re-  
 cord to be  
 made of it.

Corporation to  
 continue till all  
 debts are paid.

[Ib. § 9.]

If judgments  
 against corpo-  
 ration cannot

corporation, when they shall find it necessary, shall have power to enter upon, dig up and open any such parts of the streets, highways or townways in any place within this State, for the purpose of placing such pipes as may be necessary for making and constructing such aqueduct, or for repairing or extending the same, as the Selectmen of the town or the major part of them for the time being, shall in writing authorize and allow: *Provided*, Such Selectmen shall not have power to authorize and allow any such streets, highway or townway to be entered upon, dug up or opened, so as to obstruct or hinder the citizens of the State or others from conveniently passing therein with their teams and carriages.

SECT. 8. *Be it further enacted,* That to the end that the proprietors of the shares in any such corporate property may be known, it shall be the duty of the Clerk of any such corporation, at or immediately after the first meeting, to enter in the book or books aforesaid, the names of the several proprietors, and the shares and parts of shares each proprietor shall own, and when any share or part of a share, shall afterwards be sold for taxes or otherwise transferred, such sale or transfer shall be entered by said Clerk in such book or books, in such form, and for such fees, as the director shall appoint; and no person shall be deemed a proprietor whose share or interest shall not be so entered.

SECT. 9. *Be it further enacted,* That notwithstanding the dissolution of any such corporation, all contracts made by or with such corporation shall remain in full force, and the last proprietors or share holders shall have a corporate capacity, until all contracts and agreements, made by or with them prior to such dissolution, shall be performed; and are and shall be capable and liable, in and by the same name and capacity, as before such dissolution, to sue and be sued; and by their agent or agents, to prosecute and defend in all actions, suits and demands, respecting such contracts and agreements, until final judgment and execution. And if no corporate property can be found to satisfy any judgment which may be recovered against them as aforesaid, and such judgment shall not be satisfied within six months after the same shall



have been recovered, it shall be lawful for the judgment\* creditor to satisfy his judgment and execution out of the private estate of such proprietors or of any of them, in the same way and manner as if the judgment had been against him or them, in his or their private capacity : *Provided*, That each and every such action shall be commenced within six years next after such dissolution ; or within the like time next after such right of action shall accrue. And in case any such corporation shall at its dissolution, be seized or possessed of any estate, the several proprietors at such dissolution shall become tenants in common thereof, in such proportions as they shall respectively then hold their shares and parts of shares therein ; and upon such tenure as the corporation would have held the same, had not provision been herein made for making all their property personal estate. And all shares in such aqueducts shall be liable to be attached on mesne process, and taken in execution for the debts of the owner thereof : *Provided*, That when any share or part of a share or shares shall be so attached, an attested copy of the process shall be left with the Clerk of the corporation, fourteen days before the day of the sitting of the Court, to which the same shall be returnable. And when any such share or part of a share or shares shall be taken and sold on execution, the officer shall leave with such Clerk an attested copy of the execution, and of his return thereon, within ten days next after such sale.

SECT. 10. *Be it further enacted*, That if any person shall maliciously or wantonly injure any such aqueduct, he or she shall forfeit and pay a sum not exceeding twenty dollars, to be recovered by indictment in the Supreme Judicial Court or Circuit Court of Common Pleas ; one moiety thereof to the prosecutor, and the other moiety thereof to the use of the town in which such offence shall have been committed ; and shall also be liable to pay treble damages to the corporation so injured, to be recovered by action on the case, with costs of suit.

SECT. 11. *Be it further enacted*, That any town in which any such aqueduct shall be placed, shall have the privilege of placing conductors into and from the pipes and conductors

CH. 140.

[\*616]

be satisfied by corporate property, *private* estate of members liable.

*Provided* action be brought within 6 years from dissolution.

Estate holden at the time of dissolution, shall be deemed *real estate* and held in common.

Shares may be attached and taken in execution.

Manner.

And taken on execution and sold.

Manner.

Penalty for injuring aqueducts wantonly, &c.

[Ib. § 10.]

Mode of recovery.

Towns may lay pipes, connected with the corporation's



**CH. 141.** laid by any such corporation, for the purpose of drawing such water therefrom, as may be necessary when any\* building shall be on fire in such town ; and of withdrawing water therefrom on such occasions, without paying such corporation any price therefor : *Provided*, That every such town shall be holden to secure such conductors so by them placed in such manner that water cannot be drawn therefrom, unless by the orders of the Selectmen or firewards of the town wherein the same may be. [Approved March 8, 1821.]

**[\*617]**  
aqueduct to  
draw off water  
in case of fire.  
[Ib. § 11.]  
Proviso.

## Chapter 141.

AN ACT to enable the proprietors of Social, Military and Law Libraries to manage the same.

Proprietors of  
libraries may  
incorporate  
themselves,

[Mass. Stat.  
Mar. 8, 1806,  
§ 1.]

[Provisions of  
this act are ex-  
tended ; see ad-  
ditional act.]

**SECT. 1.** **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That any seven or more persons, capable of contracting, in any town in this State, who shall become proprietors in common of any library, may form themselves into a society or body politic, for the express purposes of holding, increasing, preserving and using such library ; and to that end, any five or more of them, may, by an application in writing, by them signed, to any Justice of the Peace within the same county wherein the said town may be, stating the purposes of their meeting, and requesting him to issue his warrant for calling a meeting of the said proprietors ; and the said Justice may grant his warrant to one of them, directing him to call a meeting of the said proprietors at the time and place, and for the purposes expressed in such warrant ; and said meeting shall be called by posting up the purport of said warrant in some public place in the said town where the said library shall be kept, seven days at least before the time of said meeting ; and the proprietors being thus met and organized, they may then agree and determine upon a method of calling future meetings ; and in all cases votes shall be determined by counting and allowing one vote to each share. And the proprietors of any such library shall have power to possess and hold, to them, their successors

and hold estate  
not exceeding



and assigns, real or personal estate, to any amount not exceeding five thousand dollars, over and above the value of their books. CH. 141.  
5000 dollars.

SECT. 2.\* *Be it further enacted,* That any seven or more of the proprietors of such library, met in pursuance of such notice, shall have power to choose a Moderator, Clerk, Librarian, Collector, Treasurer, and such other officers as they may find necessary : and the Clerk shall be sworn to the faithful performance of his duties ; and the Treasurer shall give bond, with sufficient surety or sureties, faithfully to account for all monies he may receive by virtue of this act : and the said proprietors when so incorporated and organized, shall have power to raise monies by assessments on the several shares in such library, as they may judge necessary for preserving and increasing the same ; to make bye-laws for the due regulation of the concerns of the said corporation, not repugnant to the constitution and laws of this State, and to annex and recover penalties for any breach of such bye-laws, not exceeding three dollars for any one breach thereof.

[\*618]  
Mode of calling  
meetings and  
their powers.  
[Ib. § 2.]

SECT. 3. *Be it further enacted,* That the proprietors of any such library, so incorporated, shall be called and known by the name of the proprietors of the Social Library, in the town of ——— ; and by that name shall sue and be sued, prosecute and defend, plead and be impleaded, in all actions and processes in law ; and when there shall be more than one such library in any town, the proprietors thereof, shall be known and called by the name of the proprietors of the second, third, fourth, &c. (as the case may be) Social Library in the town of ———.

Such to be called  
proprietors  
of social libra-  
ries.  
[Ib. § 3.]

SECT. 4. *Be it further enacted,* That any seven or more persons, who are officers in any division of militia of this State, who shall, by writing, associate themselves for the purpose of forming a Military Library Society, within the limits of their division, may become a body politic, by the name of the Military Library Society, in the ——— Division, for the express purpose of purchasing, holding, increasing, preserving, and using such library : and to this end, any five or more of them may make an application in writing to any Justice of the Peace, within the limits of the division to which

Military libra-  
ries.  
[Mass. Stat.  
Feb. 24, 1807.]



CH. 141. said applicants may belong, stating the purposes of their meeting, and requesting him to call a meeting of the said proprietors. And the said Justice may thereon grant his\* warrant to any one of them, directing him to call a meeting of the said proprietors at the time and place expressed in such warrant; and said meeting shall be called by posting up the purport of said warrant, in such public places, within the division where the said library is to be kept, or by publishing the same in one or more newspapers printed within the said division, twenty days at least before the time of said meeting, as the said Justice shall order. And the said proprietors being thus met and organized may then agree and determine upon the method of calling future meetings; and shall be entitled to all the other rights, powers, and privileges, and be under all the limitations and restrictions, *mutatis mutandis*, which are contained in this act.

[\*619]

Mode of calling meetings, and powers.

Law libraries.

[Mass. Stat. Mar. 2, 1815, § 1.]

Mode of calling meetings, and their powers.

SECT. 5. *Be it further enacted*, That in every county within this State, wherein there shall reside five or more attorneys at law regularly admitted and sworn to practice before the Circuit Court of Common Pleas, it shall be lawful for any five or more of them to make application in writing to any Justice of the Peace within and for said county, requesting him to issue his warrant for calling a meeting of the practitioners at law within the same county, to meet at some certain time and place for the purpose of organizing the establishment of a Law Library; and such Justice shall thereupon issue a warrant under his hand and seal, directed to some practitioner at law, residing within the shire town of said county, requiring him to notify the other members of the bar residing therein, either personally or by written notification posted up at some conspicuous place in the Court House in said county, at least seven days before the time of meeting as mentioned in said warrant; which meeting shall be holden at the next succeeding term of the Circuit Court of Common Pleas in said county, on some day subsequent to the second day from the commencement of its session; and the person to whom such warrant is directed shall serve the same in manner as aforesaid, and make return thereof under his hand to the Justice who issued the same, or to some other Justice



of the Peace within and for said county ; whose duty it shall be to preside at said meeting in the choice of a Clerk, a Treasurer and Librarian, each of whom shall thereupon be sworn by the presiding officer, to the faithful discharge of\* their respective duties, and to hold their offices during the pleasure of the association ; and the said members of the bar so notified and met, to the number of five or more, shall at their first meeting prescribe the mode of calling future meetings of said association, and establish such rules and regulations as may be found necessary from time to time, to carry the purposes of this act into effect, not repugnant to the Constitution and laws of this State ; and at all future meetings the oldest member of the bar residing within said county, who is present, shall preside. [Approved January 27, 1821.]

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[\*620]

Additional Act, ch. 460, Vol. 3, p. 302.

## Chapter 142.

AN ACT concerning Plates for Printing Bank Notes.

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That no bills of the denomination of one, two, three, four, and five dollars, shall be issued or emitted by the president, directors and company of any incorporated Bank within this State, unless the said bills shall be printed and impressed from stereotype (a) steel plates ; from which plates original impressions of the bills of the several denominations aforesaid shall be deposited in the office of the Secretary of the State of Maine ; nor unless the said bills of the denomination of five dollars shall have on the back of the same an impression from the check plates, one of the impressions from which shall be also deposited in the office of the said Secretary of this State.

No bills of five dollars and under, to be issued by any bank unless printed from stereotype plates. [Mass. Stat. Mar. 4, 1802. § 1.] Original impressions of the bills to be lodged in secretary's office. Backs of five dollar bills to be impressed by check plates, &c

SECT. 2. *Be it further enacted,* That all plates used by any incorporated Bank within this State, for the purpose of

Plates to be kept in bank vault,

(a) 1. See additional act ; also ch. 519, § 26, vol. 3, p. 389 ; also act passed March 4, 1833, ch. 80, § 3, 4.

2. Rogers' case, 2 Glf. 302.



CH. 142. making impressions of bills or notes issued by such Bank, shall at all times be kept in the vaults of said Bank, when not in actual use for making impressions of bills or notes as aforesaid : and whenever the same plate or plates shall be wanted for the purposes aforesaid, the same shall not be taken from the vaults of the Bank aforesaid but in the presence of the president, a director or the cashier of said Bank ; and the same plates shall be returned every night to the vaults of said Bank, in the presence of the president, a director or the cashier\* of said Bank as aforesaid ; and during all the time they shall be out of said vaults, they shall be in the sole custody, and be used only in the presence of such president, director or cashier.

[Mass. Stat. Feb. 24, 1818, § 1.]  
to be taken out only in presence of president, director or cashier, and returned every night, &c.

[\*621]

Penalty for having plates, &c. in possession contrary to this act.

[Ib. § 8.]

SECT. 3. *Be it further enacted*, That if any person shall have in his possession any plate or plates, used for making impressions of Bank bills or notes, contrary to the provisions of this act ; or having the same in custody under the authority of this act, shall put the same out of his custody ; or shall suffer the same to be used out of his presence ; or shall not return the same to such vault every night, as herein before provided, and be thereof convicted upon indictment in any Court of competent jurisdiction, such person shall forfeit and pay to the use of the State a fine not exceeding ten thousand dollars, or be punished by imprisonment in the common gaol ; or confinement to hard labour, for a term not exceeding ten years, at the discretion of the Court, before whom the conviction may be : *Provided however*, That it shall be lawful for Abraham Perkins, owner of the stereotype plate used for printing Bank bills, to keep possession of the said plate and use the same, in the same manner as by law he might do, if this act had not been passed. [Approved March 13, 1821.]

Proviso in favour of Abraham Perkins.

Additional Act, ch. 290, vol. 3, p. 129.



Chapter 143.

CH. 143.

AN ACT to enforce the payment of Bank Notes and for other purposes.

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That if any incorporated Bank within this State, shall refuse or neglect to pay on demand any bill or bills by such Bank issued, such Bank shall be liable to pay to the holder of such bill or bills, after the rate of two per cent. (a) per month, on the amount thereof, from and after the time of such neglect or refusal ; to be recovered as additional damages in any action against said Bank for the recovery of said bill or bills.

Penalty on banks for not paying their bills.

[Mass. Stat. June 20, 1809, § 1.]

[See ch. 519, § 11, vol. 8, p. 381.]

SECT. 2. *Be it further enacted*, That no incorporated Bank in this State, shall issue any bill, note, check or draft, payable at any place other than said Bank, unless the same shall also,\* on the face thereof, be made payable at the Bank issuing the same ; and no Bank shall issue any bill or note, redeemable at such Bank, in any other manner than by payment in specie.

Bills must be payable where issued.

[Mass. Stat. Dec. 12, 1816, § 1.]  
[\*622]

SECT. 3. *Be it further enacted*, That every incorporated Bank within this State, which has issued or shall issue any bill, note, check or draft, redeemable in any other manner than by payment in specie, or payable at any place other than the place where such Bank is by law established and kept, shall be liable to pay the same in specie to the holder thereof, on demand at said Bank, without a previous demand at the Bank or place where the same is, on the face of such bill, note, check or draft, made payable. And if the Bank which issued the same shall neglect or refuse to pay on demand made as aforesaid, any bill, note, check or draft, such Bank shall be liable to pay to the holder thereof the same penalties as are provided in and by the first section of this act : *Provided however*, That nothing herein contained, shall extend to any check or draft drawn by the president or cashier of any Bank within this State, on any other incorporated Bank, either within or without this State, for any sum exceeding

Bills issued by any bank, made payable elsewhere, to be paid at the bank,

[Ib. § 2.]  
[See ch. 519, § 20, vol. 8, p. 386.]

on penalty.

Proviso, as to bills for more than 100 dollars.

(a) This penalty militates with no principle of the constitution of the United States. *Brown vs. Penobscot Bank*, 8 Mass. 445.



## CH. 144.



one hundred dollars ; but all such checks or drafts shall first be presented for payment at the Bank on which the same shall be drawn, and in default of payment, the holder shall be entitled to recover against the Bank which issued the same, the amount of such check or draft, with two per cent. per month on the amount thereof, from and after the time when such check or draft shall have been refused payment, as additional damages in any action against such Bank for the recovery of such check or draft.

No bills for less than one dollar to be issued.

[Mass. Stat. Feb. 3, 1818, § 3.]  
[See ch. 519, § 20, vol. 3, p. 386.]

Banks may issue small bills to amount of 25 per cent. of capital.  
[\*623]  
[Ib. § 2.]

SECT. 4. *Be it further enacted*, That no Bank or banking company whatever, within this State, shall, at any time, make or issue any bill or bills whatever, wherein a fractional part of a dollar is expressed, under a penalty of one hundred dollars for every bill so made and passed, to be recovered by action of debt in any court proper to try the same, to the use of the person who shall sue therefor.

SECT. 5. *Be it further enacted*, That the president and directors of all the Banks, which now are or may be hereafter incorporated in this State, shall have the power to issue and\* emit bills of the denomination of one, two and three dollars, to the amount of twenty-five per centum of their capital stock actually paid in, any thing in their respective acts of incorporation to the contrary notwithstanding. [Approved January 27, 1821.]

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## Chapter 144.

AN ACT imposing a tax on the Banks within this State.

Tax on banks to be paid semi-annually.

[†See ch. 519, § 16, vol. 3, p. 383.]

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That the corporation of each and every Bank within this State which now is in operation, or which shall hereafter come into operation, shall, within ten days after the first Mondays of October and April annually, pay to the Treasurer of this State, for the use of the same, a tax† of one half of one per cent. on the amount of such part of their original stock as shall have been actually paid in by the stockholders in the respective Banks: *Provi-*



*ded*, That when the amount of the capital stock actually paid in on the said days, should not have been paid in for the full term of six months then next preceding, said banking corporations are hereby required to pay such portion of said sum of one half of one per cent. on such proportion of capital stock as shall not have been paid in for the full term of six months next preceding; as the time from the payment of such portion of such capital stock to the day when such payment of such tax shall become due, may bear to the term of six months.

SECT. 2. *Be it further enacted*, That it shall be the duty of the corporation of the several banks aforesaid, which have not yet completed the payment of their several instalments, and of all such as shall hereafter be incorporated, to furnish the Treasurer of the State with an abstract of the amount of stock actually paid by the stockholders in the respective corporations, into their respective banks, together with the time when the several instalments were paid, within ten days after such instalment shall have been paid in.

Banks to furnish State treasurer with abstract of stock paid, annually.

[Ib. § 3.]

SECT. 3. *Be it further enacted*, That if any Bank shall neglect to pay the said tax for the space of thirty days, after the\* same shall become due, it shall be the duty of the Treasurer to issue a warrant of distress, directed to the Sheriff of the county in which such Bank is situated, or his deputy, commanding him to levy and collect the sum due from the estate and effects of such Bank, which warrant shall be in the same form (*mutatis mutandis*) as warrants of distress against delinquent Sheriffs are by law directed to be issued. [Approved January 23, 1821.]

Mode of enforcing payment of tax.

[\*624]

[Ib. § 16.]

## Chapter 145.

AN ACT making further provisions in respect to the Banks in this State.

[Repealed; see ch. 236, Vol. 3, p. 67; and ch. 519, vol. 3, p. 376.]

SECT. 1, Provided for the payment to the State, of the Bank tax imposed by Massachusetts.

SECT. 2, Provided for the making of semi-annual returns, to the Governor and Council.

SECT. 3,\* Provided for Bank loans to the State.

SECT. 4, Provided for the liability of stockholders for the debts of their respective Banks.]

[\*625]



## CH. 146.

## Chapter 146.

AN ACT directing the mode and time of making returns of, and enforcing the right to loans from the several Banks in this State.

**BE** it enacted by the Senate and House of Representatives, in Legislature assembled, &c.

[SECT. 1 & 2, Repealed; see ch. 236, § 2, vol. 3, p. 67.]

[\*626]

SECT. 3,\* Repealed by re-enactment; see ch. 519, § 13, vol. 3, p. 382.]

Penalty on  
bank refusing  
so to loan.

[Mass. Stat.  
Feb 16, 1816,  
§ 2.]

SECT. 4. *Be it further enacted*, That if any incorporated Bank aforesaid, shall neglect or refuse, for the space of ten days after notice given as aforesaid, to loan to the said Treasurer the sum so demanded, said Bank shall forfeit and pay into the Treasury of this State, the sum of two per cent. per month upon the amount of any sum so demanded, as a loan, as aforesaid; and so after that rate for a shorter or a longer time, so long as the said neglect or refusal to comply with such demand of the said Treasurer shall continue.

Treasurer to  
commence pro-  
cess against  
bank for the  
penalty, month-  
ly.

[Ib. § 3.]  
[\*627]

SECT. 5. *Be it further enacted*, That it shall be the duty of the said Treasurer, at the expiration of one month after the said demand shall have been made to cause to be instituted, in any Court of competent jurisdiction, an action in the name and behalf, and for the use of this State against the\* Bank so neglecting or refusing as aforesaid, for the recovery of the said penalty; and so at the expiration of every succeeding month thereafter, from month to month, to cause to be instituted a similar action as aforesaid for the amount of the penalty accruing for the neglect and refusal of the then next preceding month, so long as such neglect or refusal shall continue; and it shall also be the duty of the said Treasurer, upon the obtaining judgment and execution on any such action or actions, to cause the amount thereof to be forthwith levied upon the goods, chattels or lands of the Bank against which the same shall have been obtained. [Approved January 25, 1821.]



## Chapter 147.

## CH. 147.

AN ACT to restrain unincorporated Banking Associations and for other purposes.

SECT. 1. **BE** *it enacted by the Senate and House of Representatives in Legislature assembled*, That no person shall subscribe to or become a member of any association, institution or company, or proprietor of any Bank or fund, for the purpose of issuing notes, receiving deposits, making discounts, or transacting any other business which incorporated Banks may or do transact, by force of their respective acts of incorporation, unless such person shall be authorized by law so to do. And if any person not authorized shall hereafter subscribe, or become a member, or proprietor as aforesaid, he shall forfeit and pay for every such offence, the sum of one thousand dollars, to be recovered by any person who shall sue therefor, in action of debt; one half thereof to his own use, and the other half to the use of this State. And all notes and securities for the payment of money, or delivery of property, made or given to any such association, institution or company, not authorized as aforesaid, shall be null and void.

Penalty for becoming member of an unincorporated banking association.

[Mass. Stat. June 22, 1799, § 1.]

Mode of recovery and appropriation.

Notes, &c. Payable to such association to be void.

[SECT. 2,\* Repealed; see ch. 243, vol. 8, p. 74.]

It prohibited the passing of bank bills for a sum less than five dollars.]

[Approved March 18, 1821.]

[\*629]

## Chapter 148.

AN ACT to regulate the inspection of Beef and Pork intended to be exported from this State.

SECT. 1. **BE** *it enacted by the Senate and House of Representatives, in Legislature assembled*, That there shall be an Inspector (a) General of beef and pork for this State, who shall be well skilled in the knowledge of the same, to be appointed by the Governor, with the advice and consent of Council, and to be by them removable at pleasure, who before he shall enter on the duties of his office, shall give bonds

Governor to appoint inspector general of beef and pork; [Mass. Stat. Mar. 4, 1800, § 2; Mar. 11, 1802.]

who shall give bond to State treasurer.

(a) For fees of, see ch. 208, vol. 8, p. 26; also ch. 239, ib. p. 69.



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with sufficient sureties to the Treasurer of this State, in the penal sum of four thousand dollars for the faithful discharge of his duty ; and shall also be sworn faithfully to perform the same. And such inspector shall have power, when so qualified, to appoint, and shall appoint deputy inspectors, who shall be removable by him at pleasure, in every sea port town in this State where beef and pork are exported ; and a sufficient number in the several counties in the State to accommodate the citizens without any unreasonable delay ; for which deputies he shall be answerable ; and the said deputy inspectors shall also be sworn for the faithful discharge of their duty, and shall give bond to the Inspector General, with surety to his satisfaction, in a sum not exceeding one thousand, nor less than three hundred dollars, conditioned for the faithful performance of their duty, according to the provisions of this act.

He may appoint deputies who shall be sworn and give bond.

[\*629]  
Quality and size of barrels and half barrels to contain beef and pork for exportation.

[Mass. Stat. Mar. 4, 1800, § 5.]

Manner of being hooped.

[Mass. Stat. Mar. 11, 1802, § 3.]

SECT. 2.\* *Be it further enacted (b),* That every barrel and half barrel in which beef or pork shall be packed and repacked for exportation, shall be made of good seasoned rift white oak, white ash or maple staves and heading free from any defect ; each barrel shall contain two hundred pounds of beef or pork, and each half barrel one hundred pounds of beef or pork ; the beef barrels to measure not less than sixteen inches, nor more than sixteen and one half inches between the chimes, and to be not less than twenty-eight, nor more than twenty-eight and a half inches long, to be covered three fourths of the length with good oak, ash, elm, leverwood or walnut hoops, leaving one fourth in the centre ; the heads and staves to be of a proper thickness, the hoops to be well set and drove together ; the half barrels to contain not less than fifteen nor more than fifteen and a half gallons, to be hooped in the same manner as the whole barrels. The pork barrels shall measure seventeen inches and one quarter between the chimes, and contain not less than thirty-one gallons, nor more than thirty-one gallons and one half, to be hooped in the same manner as beef barrels ; and all beef and pork barrels and half barrels shall be branded on the bilge with the manufacturer's name.

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(b) See ch. 511, vol. 8. p. 364.



**SECT. 3.** *Be it further enacted (c),* That no beef shall be packed or repacked in barrels or half barrels for exportation, unless it be of fat cattle not under two years old ; that all such beef shall be cut into pieces as nearly square as may be, and which in size shall not exceed eight pounds, nor be less than four pounds. That all beef which the inspector or deputy inspector shall find on examination to have been killed at a proper age, to be fat and otherwise good and merchantable, shall be sorted and divided by him into five different sorts for packing or repacking into barrels or half barrels to be denominated Mess, No. 1, No. 2, No. 3, and Hearts and Cheeks. And mess beef shall consist of oxen, cows and steers well fatted, of three years old and upwards and weighing six hundred pounds and upwards; the shin, shoulder, clod, and neck shall be taken from the fore quarters, and the leg and the leg rand from the hind quarters ; and each barrel and half barrel containing beef of this description, shall be branded on one of the heads with the words Mess\* Beef; No. 1. shall consist of oxen, cows, steers, and heifers not under three years old, and weighing not under four hundred pounds, and to average five hundred and twenty pounds, without any necks or shanks. On one head of each barrel and half barrel containing beef of this description, shall be branded No. 1. No. 2. shall consist of fat cattle of all descriptions not before mentioned of two years old and upwards (bulls excepted) with not more than half a neck and two shanks, and without any hocks : each barrel and half barrel of which shall be branded No. 2. And those parts of beef which are excluded from mess, No. 1. and No. 2. (not excluding hearts and cheeks) shall be packed and inspected by the Inspector General, or his deputies, in the same manner as No. 1. or No. 2. and shall be branded No. 3. ; first taking from

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Quality of beef for exportation.

[Mass. Stat. Mar. 4, 1800, § 4.]

Different kinds of beef.

Mess beef.

[\*630]  
of No. 1.


No. 2.

No. 3.

(c) 1. See ch. 291, vol. 3, p. 129 ; also act passed Feb. 27, 1832, ch. 18.

2. The seller of beef which is branded will be chargeable to the purchaser in damages, notwithstanding the brand, if at the time of the sale he has knowledge, or special reason to suspect, that the beef had not been properly cured, was without sufficient salt, was already in a putrid state, or becoming putrid, or in short, if he then knew or actually suspected, that the inspector had been false, ignorant or depraved. *Emerson & al. vs. Brigham & al.* 10 Mass. 203.



CH. 148.  said pieces, excluded as aforesaid, viz : the end of the neck, weighing not less than four pounds, nor more than six pounds ; and from the shank and shin of each quarter not less than four pounds, nor more than eight pounds : which pieces thus excluded, shall not be exported from this State.

Hearts and cheeks.

And the hearts and cheek pieces of beef may be inspected, and when thus inspected shall be branded Hearts and Cheeks.

Beef, how salt-  
ed and preserv-  
ed.

And every barrel of beef shall be well salted with seventy-five pounds of clean St. Ubes, Isle of May, Lisbon or Turks Island salt, or eighty pounds of Liverpool salt, or other salt of equal quality, exclusive of a picklo made of fresh water, as strong as salt will make it ; and to each barrel of mess beef shall be added six ounces of saltpetre ; and to each barrel of No. 1. No. 2. and No. 3. Beef, shall be added four ounces of saltpetre ; and each half barrel of beef shall be salted and saltpetred with one half of the quantity of salt and saltpetre above mentioned.

Quality and kinds of pork.

[Mass. Stat.  
Mar. 11, 1802,  
§ 2.]

Clear pork.

[\*631]  
Bone mid-  
dlings.

Navy mess.

No. 1.

SECT. 4. *Be it further enacted*, That all pork packed or repacked in barrels or half barrels for exportation, shall be sorted and divided by the inspector or his deputy, and denominated as follows ;—Clear (*d*) pork, Bone middlings, Navy mess pork, No. 1, No. 2, and No. 3 ; and in all cases the following parts shall be taken out as refuse, viz : nose pieces or faces, ears, brains, tails, feet and lard. Clear pork shall consist of the best pieces of large well fatted hogs, weighing three hundred pounds and upwards, free from bones or the lean part of the\* meat. Bone middlings shall consist of middle pieces taken from hogs well fatted, weighing two hundred and thirty pounds or upward. Navy mess pork shall consist of all parts of the carcass, well fatted, weighing from one hundred and sixty pounds, to two hundred and thirty pounds, except the head, fore and hind legs, the shoulder joint, lard and refuse parts above mentioned. No. 1(*e*),

(*d*) See ch. 276, § 2 & 3, vol. 3, p. 104 ; and ch. 511, vol. 3, p. 364 ; also act passed Feb. 27, 1832, ch. 18.

(*e*) “ All pork constituting the quality denominated ‘ No. 1, clear pork,’ shall be branded *Extra Clear Pork*, and all pork constituting the quality denominated ‘ No. 2, clear pork,’ shall be branded *Clear Pork*.” See statute passed Feb. 9, 1833.



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shall consist of all parts of hogs well fattened, averaging two hundred and twenty pounds or upwards, and each of which shall weigh not less than one hundred and eighty pounds, and to have no more heads, legs, shoulders, or other coarse parts than belong to one carcass, deducting the lard and refuse as above. No. 2, shall consist of all parts of one and an half hog well fattened, which shall weigh two hundred pounds, deducting the lard and refuse as above. No. 2, also in half barrels, shall consist of pig pork, all parts of one carcass or not, and not to contain the head or legs of more than one carcass, excluding the lard and refuse as above. And in all cases where the legs of pork are taken out for bacon, or for any other purpose, the weight shall not be made up with heads or shoulders, but with other parts of the carcass not less valuable than the legs would be if they were salted. No. 3, shall consist of the merchantable parts of wholesome pork, of a quality inferior to good No. 2 pork, and the barrels shall contain two hundred pounds of pork each, and there shall not be any more than the merchantable parts of two carcasses of pork in one barrel, except where any of the legs are taken out, the same number of shoulder pieces, and no more may be added, making up the deficiency of weight in better parts of a carcass of pork. Barrels filled with pork heads or feet, shall be branded *Pork heads*, or *Feet*, as the case may be: And each barrel of pork shall be well salted with seventy pounds of clean coarse salt, exclusive of a strong pickle, and shall be branded on one of the heads with the quality of the pork it contains.

[Mass. Stat.  
Mar. 15, 1806,  
§ 1.]

Pork heads or  
feet.

Barrels of pork  
how salted, &c.

SECT. 5. *Be it further enacted*, That it shall be the duty of the Inspector General and his deputies to attend, as soon as may be, within twenty-four hours after request made, at any suitable place within the county where he resides, for the purpose of inspecting any quantity of beef or pork exceeding\* thirty barrels: And whenever said inspector or his deputies shall have inspected and assorted beef or pork, as the law requires, the said inspector or his deputies, with their own labourers and coopers, or such other labourers and coopers as they shall employ, and for whose conduct in said business they shall be accountable, shall cut, weigh, pack, salt and cooper the said beef, which they have thus inspected.

Duty of inspectors to inspect as soon as may be in counties where they reside.

[Mass. Stat.  
June 19, 1801,  
§ 1.]  
[632]

[Mass. Stat.  
June 23, 1802,  
§ 1.]



## CH. 148.

SECT. 6. *Be it further enacted,* That all barrels and half

Manner of  
branding beef  
and pork.

[Mass. Stat.  
Mar. 4, 1800,  
§ 6.]

[See ch. 276,  
§ 2 & 3, vol. 3,  
p. 104; and  
ch. 511, vol.  
3, p. 366.]

Name of  
month may be  
abbreviated in  
certain cases of  
inspection.

[Mass. Stat.  
June 14, 1815,  
§ 2.]

Penalty for in-  
spectors brand-  
ing any pack-  
ages of provis-  
ions not in-  
spected and  
weighed by  
them; or any  
cask not in-  
spected, or be-  
ing guilty of  
fraud, &c. in  
inspecting.

[Mass. Stat.  
June 23, 1802,  
§ 2; & Mar. 4,  
1800, § 1.]

Penalty for de-  
puty inspector  
branding any  
cask of beef or  
pork out of the  
town for which  
he is appoint-  
ed.

[\*633]  
[Mass. Stat.  
Mar. 4, 1800,  
§ 6.]

[Mass. Stat.  
June 14, 1815,  
§ 4.]

barrels of pork and beef packed or repacked for exportation, shall be branded with the first letter of the christian name, and the surname at length, of the inspector who has inspected the same, with the name of the town where, and with the month and year in which the same has been, or may hereafter be so inspected, in legible letters, with the addition of the word *Maine*; and every barrel and half barrel of the three first sorts shall also be branded with the name of the person for whom the pork or beef was packed.

SECT. 7. *Be it further enacted,* That the Inspector General or his deputy or either of them, may, when the month in which any beef or pork shall be inspected, shall consist of more than one syllable, so abbreviate the name of the month, as conveniently to brand the same on the head of each barrel or half barrel, by him or them inspected.

SECT. 8. *Be it further enacted,* That the Inspector General and his deputies shall not, nor shall either of them, brand any packages of provisions, other than those which they have inspected, and have caused to be weighed and packed as the law requires. And if any inspector or deputy inspector, appointed by virtue of this act, shall be guilty of any neglect or fraud in inspecting any beef or pork, contrary to the true intent and meaning of this act, or shall mark with their respective brands any cask containing beef or pork, which has not been actually inspected, he or they shall forfeit and pay ten dollars for each and every cask so falsely marked.

SECT. 9. *Be it further enacted,* That no deputy appointed by virtue of this act, shall inspect or brand any cask of beef or pork out of the town or county for which he shall be appointed, under the penalty of fifty dollars; and if any person,\* other than the said inspector or his deputy shall presume to stamp or brand any cask of beef or pork, in the manner directed by this act, every person so offending, shall forfeit the sum of twenty dollars for each and every cask so unlawfully branded.

SECT. 10. *Be it further enacted,* That if any inspector or deputy inspector shall neglect or refuse to brand any beef or pork to be exported agreeably to this act, he shall be subject



and liable to the same penalties and forfeitures as are recoverable in the eighth section of this act for falsely marking any cask.

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SECT. 11. *Be it further enacted*, That if any person shall intermix, take out or shift any beef or pork out of any cask inspected or branded as by this act is required, or put in any other beef or pork for sale or exportation, contrary to the intention of this act, the person or persons so offending shall, for each and every offence, forfeit and pay the sum of twenty dollars.

Penalty for fraudulently mixing or shifting contents of casks.

[Mass. Stat. Mar. 4, 1800, § 10.]

SECT. 12. *Be it further enacted*, That no person or persons whatsoever shall ship or export from this State any salted pork, except in barrels or half barrels, nor any salted beef except in barrels or half barrels of the quality and dimensions herein provided, and the contents thereof are inspected and packed, and unless the casks containing the same are branded agreeably to the directions in this act.

Penalty for exporting, &c. beef and pork, except in barrels, &c. inspected as aforesaid.

[Ib. § 1.]

SECT. 13. *Be it further enacted*, That no salted beef or pork shall be exported out of this State, unless the master or owner of the vessel produces to the Collector or any other officer authorized by the laws of the United States to clear vessels out, a certificate from the Inspector General or his deputy, that the same has been inspected and branded according to the directions in this act; and each certificate shall express the number of barrels and half barrels of beef or pork of each sort. And the master or owner of every vessel in which beef or pork, is so exported, on producing said certificate, shall take and subscribe the following oath before the officer authorized as aforesaid.

Collector of customs to be furnished with certificate of inspection and branding, by master of vessel.

[Ib. § 11.]

Substance of certificate.

To be sworn to.

I, A B, of the ——— do swear, that according to the best of my knowledge and belief the certificate hereunto annexed contains the whole quantity of salted beef (or pork as the case\* may be) on board the ———, ——— master; and that no salted beef (or pork, as the case may be) is shipped on board said vessel for the ship's company, on freight or on cargo, but what is inspected and branded, according to the law of this State. *So help me GOD.*

Form of oath.

[\*634]

SECT. 14. *Be it further enacted*, That nothing in this act shall prevent the exportation of rounds of beef in kegs or tubs as is now practised: *Provided however*, That the name of the owner, and the town where he resides, shall be branded on one head of each keg or tub, under the penalty of one dollar for each keg or tub not branded.

Rounds of beef may be exported in kegs, &c. and how branded.

[Ib. § 14.]



## CH. 148.

**SECT. 15.** *Be it further enacted,* That the feet, ears and faces of pork (when separated from the cheek part of the head, or any other pieces prohibited by this act) shall not be exported under the brand *refuse*, or any other brand approved or provided for the exportation of pork.

Feet, ears, and faces not to be exported as refuse, &c.

[Mass. Stat. Mar. 15, 1805, § 2.]

Penalty for exporting beef or pork not inspected.

[Mass. Stat. Mar. 4, 1900, § 16.]

Justice of the Peace may issue a warrant for seizing uninspected beef and pork on board vessel, and to secure it for trial

**SECT. 16.** *Be it further enacted,* That if any person or persons shall export or ship for exportation out of this State any salted beef or pork not inspected and branded as by this act is directed, every such exporter or shipper, and the master of every vessel having on board such uninspected beef or pork, shall, on conviction, respectively forfeit and pay the sums following : The owner or exporter shall forfeit and pay the sum of six dollars, and the master of every vessel having the same on board, the sum of two dollars, for every cask exported or shipped for exportation. And it shall be lawful for any Justice of the Peace, upon any information given of any beef or pork being put on board any vessel as aforesaid, not inspected and branded as required by this act, to issue his warrant, directed to the Sheriff, or his deputy, or to a Constable, requiring them respectively to make seizure of any such salted beef or pork not marked and branded as aforesaid, and to secure the same in order for trial ; and said officers are hereby respectively required and empowered to execute the same. And it shall be the duty of every person when required, to give the necessary aid for that purpose, on pain of forfeiting five dollars for his refusal.

Penalties how recovered.

[Ib. § 13.]

[\*635]

**SECT. 17.** *Be it further enacted,* That all penalties and forfeitures aforesaid shall be recovered by an action of debt or\* information, in any Court proper to try the same ; one moiety thereof to the use of the town wherein the offence shall be committed, and the other moiety to him or them who shall inform and sue for the same.

Inspectors may seize beef and pork laden for exportation in certain cases,

[Mass. Stat. June 19, 1901, § 8.]

**SECT. 18.** *Be it further enacted,* That if the Inspector General of beef, or any of his deputies, having information or knowledge of any quantity of beef or pork being laden in any port or place within this State for exportation, in respect to which there shall not be a conformity to this act, it shall and may be lawful for the said Inspector General or his deputy, to make seizure thereof forthwith, and to file a libel or



information thereupon, in any Court proper to try the same : **CH. 148.**  
 And upon trial of such beef or pork so seized as aforesaid, in case a breach of this act shall be proved, shall be liable to condemnation and forfeiture ; one moiety to the use of the State, and the other moiety to the use of the officer seizing and prosecuting for the same.

which may be condemned as forfeited in case.

**SECT. 19.** *Be it further enacted,* That all the provisions, penalties, regulations and requirements contained in this act, shall be construed to extend, and shall extend to all beef or pork transported, or intended to be transported coastwise from any port or place in this State, to any of the United States, or shipped on board of any vessel for any purpose whatever.

This act to extend to beef and pork transported coastwise from this State to any other of the U. States.  
 [Ib. § 5.]

**SECT. 20.** *Be it further enacted,* That it shall be the duty of every deputy inspector to make a return to the Inspector General once in every year of the number of barrels and half barrels of beef or pork inspected by them agreeably to the directions of this act ; and the Inspector General in the month of January annually shall make a return into the office of the Secretary of this State, of the whole number of barrels and half barrels inspected according to the directions of this act, by him or his deputies the year preceding, under each of the respective brands used by him, designating in the return the different sorts and the places at which it was inspected : said returns to be made up to the first day of January in each year. And the Inspector General may, and he is hereby authorized to administer the several oaths required by this act.

Deputy inspectors to make annual return to inspector general.  
 [Mass. Stat. Mar. 4, 1800, § 3.]  
 Inspector general to make annual returns to secretary of State, of whole number of barrels, &c. inspected by him and his deputies.

**SECT. 21.\*** *Be it further enacted,* That no beef or pork shall be weighed by the owners or keepers of any slaughter houses, stores, or warehouses, or by any persons under their direction or control in said houses, in any greater quantity than fifty pounds, except in scales and with weights, or by the vibrating steelyard invented by Benjamin Dearborn, or the vibrating steelyard invented or improved by Samuel Hills duly sealed, according to the act entitled “ An Act for the due regulation of weights and measures ;”† and every owner or keeper of any slaughter house, store or warehouse, or any person or persons by their direction, or under their control

[\*636]  
 How beef and pork may be weighed in slaughter houses.

Penalty for weighing in any other manner.

[†See ante, p. 601, § 10.]



CH. 148. in said houses, who shall weigh any beef or pork in any greater quantity than fifty pounds by steelyards other than above named, or in any other way than by scales and weights duly sealed as aforesaid, shall, for every such offence, forfeit and pay the sum of ten dollars to be recovered by action of the case, before any Court competent to try the same, by any person who shall first sue for the same ; one half to the use of the person who shall sue as aforesaid, and the other half to the use of the poor of the town in which such offence shall be committed.

Selectmen may appoint weighers of beef to be sold in market.  
[Mass. Stat. Feb 13, 1816, § 1.]  
Weighers to be sworn.

SECT. 22. *Be it further enacted,* That it shall be the duty of the Selectmen of every town within this State, where beef cattle are sold for the purpose of market, or barrelling, to appoint one or more person or persons not being dealers in cattle, and conveniently situated in such town, to be weigher or weighers of beef, who shall be sworn to the faithful discharge of the duties of their office, and shall receive such fees as are hereinafter described.

Beef so sold to be weighed by sworn weighers, who are to give certificates, &c.  
[Ib. § 2.]

SECT. 23. *Be it further enacted,* That all beef sold as aforesaid, shall be weighed by the said sworn weighers, and certificates of the weight of all the beef, hide and tallow of each head of cattle, in the form following, shall be signed by the said weighers, and delivered to the seller or sellers thereof :

[\*637]  
Form of certificate.

Form\* of Certificate.

This certifies that I have duly weighed the cattle bought by — of — from — of — this — day of — 182 —.

Beef					
Hide					
Tallow					
Total					

Sworn Weigher.

Penalty for buying beef cattle for market or barrelling, contrary to this act, &c.

SECT. 24. *Be it further enacted,* That any butcher or purchaser of beef cattle, intended for market or barrelling, who shall purchase any such beef cattle contrary to the true intent and meaning of this act shall forfeit and pay the sum of thirty dollars for each and every such offence to be recovered with cost of suit by action, before any Court proper to try the same ; one half to the use of the State, and the other half to the person who shall prosecute for the same : *Provided* nothing in this act shall prevent any person or persons from



buying or selling live cattle, commonly called cattle on the foot: and *Provided*, that no person shall be obliged to weigh any beef cattle when the weight or mode of weighing shall be agreed upon by the buyer and seller. CH. 149.

SECT. 25. *Be it further enacted*, That the inspector of beef and pork and his deputies, who are now in office in this State, shall and may continue to exercise and perform all the duties of their respective offices, in as full and ample manner as they might lawfully do if appointed pursuant to the first section of this act. [Approved March 19, 1821.]

Provision for continuing present inspectors, &c. in office.

Additional Act, ch. 276, Vol. 3, p. 103.

## Chapter 149.

AN ACT to ascertain the quality of Butter, and Hogs Lard; and for the more effectual Inspection of the same.

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That there shall be an inspector (a) of butter and lard for the State who shall be skilled in the knowledge and properties of the same, to be appointed\* by the Governor, with the advice and consent of the Council, to be by them removable at pleasure; and who, before he shall enter upon the duties of his office, shall give bond, with sufficient sureties, to the Treasurer of the State, in the penal sum of one thousand dollars, for the faithful discharge of his duty; and shall also be sworn faithfully to discharge the same. And such inspector shall have power, when so qualified to appoint, and shall appoint deputy inspectors in every sea port town where butter and lard is exported, and such other places as he shall judge necessary, for whom he shall be answerable; and shall take bonds from them with sufficient surety or sureties, in the penal sum of five hundred dollars, for the faithful discharge of their duty; and they shall also be sworn to the faithful discharge of their duty.

Governor to appoint inspector of butter and lard, [Mass. Stat. Mar. 4, 1800, § 9.] [\*638]

who shall give bond and be sworn,

and may appoint deputies,

who shall also give bond.

SECT. 2. *Be it further enacted* (b), That no person or

(a) For fees of, see ch. 208, vol. 3, p. 26; also ch. 289, § 2, ib. p. 70.

(b) See modifications of § 2, by ch. 276, vol. 3, p. 103; and ch. 378, vol. 3, p. 228.



**CH. 149.** persons whatsoever, shall ship any butter or lard for exportation, before he shall first have submitted the same to the view and examination of the inspector or his deputy, who shall be appointed as is hereinafter provided; who shall inspect and prove all butter and lard in casks, firkins or kegs that shall be intended to be laden on board any vessel for exportation. And every such inspector or his deputy, shall examine the casks, kegs or firkins containing the said commodity, intended to be exported as aforesaid, and with a hollow iron searcher shall, from one side of the head of said casks, kegs or firkins, perforate diagonally to the other head, and thereby draw out so much butter or lard as shall determine the quality of the whole; and see that it be preserved with a due proportion of good fine salt, sweet, and in all respects fit to be exported, without danger of spoiling, to any foreign market. And every cask, keg, or firkin of butter and lard which according to the inspector's best judgment, appears to be good and merchantable as aforesaid, he shall distinguish by the words first, second, or third, and all other butter and lard shall be distinguished by the word *refuse*, and branded in plain legible letters, together with the word MAINE, and the name of the town where it shall be thus inspected, with the initial letters of his christian name and his surname at large; and each cask, keg or firkin of butter or lard,\* inspected as aforesaid, shall also be branded with the word *butter* or *lard*, as the case may be.

No butter or lard to be shipped before being inspected.

[Ib. § 1.]

Mode of inspection.

Manner of branding.

[\*639]

Size and quality of casks, kegs and firkins to contain butter and lard for exportation.

[Ib. § 2.]

**SECT. 3.** *Be it further enacted (c),* That every cask, keg or firkin, in which butter or lard shall be packed for foreign exportation, shall be made of sound and well seasoned white oak or ash staves and heading, full bound, twelve and an half inches in length, and eight and an half inches diameter in the head, or fifteen inches in length, and ten and an half inches diameter in the head, or kegs twelve inches long and seven and an half inches diameter in the heads; or ten inches long with six inches head.

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(c) So much of § 3, "as relates to the description of the wood, or the size of the casks, kegs or firkins, in which butter shall be packed for exportation to any of the States east of New York," is repealed by ch. 263, vol. 3, p. 92; see also ch. 378, vol. 3, p. 228, exempting butter from inspection in certain cases.



**SECT. 4.** *Be it further enacted,* That each cask, keg or firkin, before any butter or lard be packed therein, shall be filled with a strong brine, which shall remain therein three days; and as soon as the brine is emptied from the cask, keg or firkin, it shall be weighed by the owner of such butter or lard, who shall, with a marking iron, mark on one of the heads thereof, the full weight of the cask, keg or firkin, and shall brand or imprint, with a burning iron, the initial letter of his christian name, and his surname at large; and in case he shall falsely mark the same, such owner, upon conviction thereof shall forfeit three dollars.

CH. 149.

Casks to be filled with brine, and weighed and marked, and how.

[Ib. § 3.]

**SECT. 5.** *Be it further enacted (d),* That no butter or lard shall be exported out of this State unless the master or owner of the vessel produces to the collector or any other officer authorized by the laws of the United States to clear vessels out, a certificate from the Inspector General or his deputy, that the same has been inspected and branded according to the directions in this act; each certificate shall express the number of casks, and their weight; and the master or owner of any vessel in which butter or lard is so exported, on producing said certificate, shall take and subscribe the following oath before the officer authorized as aforesaid:

Master of vessel to produce to collector, a certificate of inspection, before clearance,

[Ib. § 4.]

and make oath to such certificate.

I, A B, of ———, do swear, that according to the best of my knowledge and belief, the certificate hereunto annexed contains the whole quantity of butter or lard (as the case may be) on board ———, ——— master; and that no butter or lard (as the case may be) is shipped on board said vessel for the ship's company, on freight, or on cargo, but what is inspected and branded according to the law of this State. *So help me GOD.*

Form of oath.

**SECT. 6.\*** *Be it further enacted,* That if any person or persons shall export, or ship for exportation, out of this State, any butter or hogs lard, not inspected and branded as by this act they are directed; every such exporter or shipper, and the master of every vessel having on board such uninspected butter or lard, shall on conviction thereof, respectively forfeit and pay the sums following; the owner or exporter shall forfeit and pay the sum of five dollars; and the master of every vessel having the same on board, the sum of three dollars,

[\*640]  
Penalty for exporting from this State, any butter or lard without inspection,  
[Mass. Stat. June 17, 1900, § 4.]  
on owner and master of vessel.

(d) So much of § 5 "as relates to butter exported, or intended to be exported from this State, to any of the United States east of New York," is repealed by ch. 263, vol. 3, p. 92.



## CH. 149.

[†See ante, § 3, and note thereto.]

Justice of the Peace may issue his warrant for seizing butter or lard not inspected and branded, on board any vessel.

Penalty for inspector refusing or delaying to examine and inspect for 3 hours.

[Mass. Stat. Mar. 4, 1800, § 5.]

Penalty for neglect, &c. to brand butter or lard.

[Mass. Stat. Feb. 15, 1816, § 4.]

Penalty for counterfeiting brand.

[Mass. Stat. Mar. 4, 1800, § 6.]

[\*641]

Penalty for shifting contents of casks, fraudulently.

[Ib. § 7.]

for each cask exported or shipped for exportation.† And it shall be the duty of any Justice of the Peace, upon any information given of any butter or hogs lard being put on board any vessel as aforesaid, not inspected and branded as required by this act, to issue his warrant, directed to the Sheriff or his deputy, or to a Constable, requiring them respectively to make seizure of any such butter or hogs lard not marked and branded as aforesaid, and to secure the same in order for trial; and said officers are hereby respectively required and empowered to execute the same; and it shall be the duty of every person, when required, to give the necessary aid for that purpose, on pain of forfeiting five dollars for his refusal.

SECT. 7. *Be it further enacted*, That if any inspector of butter and lard (according to the duties of this act) shall on application made for the examination of any butter or lard as aforesaid, unreasonably refuse, neglect or delay to proceed to such examination and inspection, for the space of three hours after such application so made to him, the inspector so refusing, neglecting or delaying to make such examination or inspection, shall, for each offence forfeit the sum of two dollars.

SECT. 8. *Be it further enacted*, That if any inspector or deputy inspector shall neglect or refuse to brand any butter or lard, to be exported agreeably to this act, the person or persons so offending, shall be subject and liable to the same penalties and forfeitures mentioned in the seventh section of this act.

SECT. 9. *Be it further enacted*, That if any person shall counterfeit any brand belonging to, or proper to be used by the said inspector or any of his deputies, or shall impress or brand\* any cask, keg or firkin of butter or lard with any brand or brands of such inspector, or with any counterfeit brand as aforesaid, he shall forfeit and pay for each offence the sum of ten dollars.

SECT. 10. *Be it further enacted*, That if any person shall empty any cask, keg or firkin of butter or lard inspected and branded as by this act is required, and put in any other butter or lard for sale or exportation, without first cutting out the said brands and marks, the person or persons so offend-



ing, shall for each such cask, keg or firkin, forfeit and pay **Ch. 150.**  
the sum of ten dollars.

**SECT. 11.** *Be it further enacted,* That all fines and forfeitures mentioned in this act shall, and may be sued for and recovered, with costs, by any person to his own use before a Justice of the Peace, or any other Court proper to try the same, with liberty of appeal, as in other civil actions. Fines and penalties how recovered and appropriated. [Ib. § 8.]

**SECT. 12.** *Be it further enacted,* That it shall be the duty of the inspector of butter and lard in the month of January annually to make a return of the number of casks of different qualities of these articles branded by him, and his deputies, and the weight of the respective kinds, into the office of the Secretary of this State: The returns above specified to be made up to the first day of May of each year. And the said inspector shall require of his deputies to make the returns to him necessary to carry into effect the provision aforesaid. Inspector to make annual returns to secretary of State, and require of his deputies to make the requisite returns to him.

**SECT. 13.** *Be it further enacted,* That the inspector of butter and lard and his deputies, who are now in office in this State, shall and may continue to exercise and perform all the duties of their respective offices in as full and ample manner as they might lawfully do, if appointed pursuant to the first section of this act. [Approved March 19, 1821.] Inspector and deputies now in office to continue, &c.

Additional Act, ch. 263, vol. 3, p. 92.

## Chapter 150.

**AN ACT** to provide for the packing and inspection of Pickled and Smoked Fish.

**SECT. 1.** **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That the Governor or with the advice of Council is hereby authorized and directed to appoint\* and commission during his pleasure in each town and plantation in this State, where pickled fish or smoked alewives and herrings are cured or packed for the purpose of exportation, one or more suitable person or persons inspector (a) or inspectors of pickled fish and smoked alewives Governor to appoint inspectors of pickled fish and smoked alewives and herrings. [1842]

(a) 1. Inspectors of fish are required to make annual returns to the office of Secretary of State, by act passed March 2, 1833, ch. 74.



## CH. 150.

Inspector to be sworn and give bond to town treasurer, &c.

Selectmen to examine such bonds, annually;

if found insufficient to be renewed, or inspector to be removed.

Persons injured may sue such bonds.

Proceedings on such suits.

Quality and size of casks for packing pickled fish.

[Mass. Stat. Mar. 6, 1810, § 1.]

[\*643]

and herrings, who shall be well skilled in the quality of the same, and before he enters on the duties of his office shall be sworn to the faithful discharge thereof, and shall give bond with sufficient sureties to the Treasurer of the town or plantation in which he is appointed, in the penal sum of not less than five hundred nor more than one thousand dollars for the faithful performance of the duties of his office. And the Selectmen of towns, and Assessors of plantations in which such inspectors shall be appointed, shall annually examine the bonds given as aforesaid, and if the bond of any such inspector shall by them be considered insufficient, they shall forthwith notify such inspector of the same, and if any inspector shall for thirty days after such notice, neglect to give bond as aforesaid to the satisfaction of such Selectmen or Assessors, it shall be their duty to give information thereof to the Governor who shall remove such inspector and appoint some other person to such office. And any person injured by the neglect or misdoings of any such inspector, shall be entitled to a copy of such bond, and shall have a right to bring an action thereon in the name of such Treasurer for his own use and benefit: and on producing the original in Court and obtaining judgment thereon, execution shall issue for such sum only as shall be found due in damages to the person for whose use any such action shall be brought; and the amount thereof being entered by the Clerk of the Court on the original bond, the same may be delivered back (by leaving a copy) to the Treasurer from whom the same was received.

SECT. 2. *Be it further enacted*, That all barrels, half barrels and tierces which shall be made or used for the purpose of packing or containing pickled fish, shall be made of sound, well seasoned white oak, ash, red oak, spruce, pine or chesnut staves of rift timber, with heading of either of the said kinds of wood, sound, well seasoned, and the pine heads free from sap: said heading to be well planed; the barrels,\* half barrels and tierces to be well hooped, with at least three hoops on each bilge, and three hoops on each chime, all of which shall be good hoops of sufficient substance, the barrel

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2. When fish are to be inspected in a town where no inspector resides, any inspector in the county may perform the service, by ch. 201, vol. 3, p. 22.



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staves to be twenty-eight inches in length, and the heads to be seventeen inches between the chimes ; and to contain not less than twenty-nine nor more than thirty gallons ; and barrels, half barrels and tierces shall be branded on the side of the cask near the bung with the name of the maker or owner of said cask, and shall be made in a workmanlike manner, to hold pickle ; the half barrels to contain not less than fifteen gallons, and the tierces to contain not less than forty-five nor more than forty-six gallons : *Provided however*, That nothing contained in this act, shall extend to fish packed in kegs of less than ten gallons.

Proviso as to fish in kegs.

SECT. 3. *Be it further enacted*, That all boxes which shall be made for the purpose of packing smoked alewives or herrings and containing the same, shall be made of good sound boards, sawed and well seasoned, the sides, top and bottom of not less than half inch boards, and the ends not less than three quarters of inch boards, securely nailed with not less than eight sixpenny nails, and sixteen four penny nails to each box, and the top of each box to be planed, and shall be seventeen inches in length, eleven inches in breadth and six inches in depth in the clear, inside. And all alewives or herrings intended to be smoked and packed shall be sufficiently salted and smoked, to cure and preserve the same ; and afterwards closely packed in the boxes, in clear and dry weather.

Quality and size of boxes for packing alewives and herrings.

Herring, &c. for exporting, to be well salted and smoked.

SECT. 4. *Be it further enacted*, That it shall be the duty of the inspector to see that salmon, mackerel, shad and all other kinds of split pickled fish, or fish for barrelling, have been well struck with salt or pickle in the first instance, and preserved sweet, free from rust, taint or damage. And such fish as are in good order, and of a good quality, shall be packed in tierces, barrels or half barrels ; the tierces shall contain three hundred pounds, the barrels shall contain two hundred pounds, and the half barrels one hundred pounds of fish each ; and the same shall be packed with thirty-five pounds of good and clean coarse salt, suitable\* for the purpose to each barrel ; and said casks after being packed and headed up with the fish, and sufficient salt to preserve the same, shall be filled up with a clear strong pickle ; and shall

Duty of inspectors as to packing salmon, mackerel, &c.

[Mass. Stat. June 23, 1803, § 3; June 20, 1804, § 2; and Mar. 6, 1810, § 3.]

[\*644]



CH. 150. be branded Salmon, Mackerel, Shad (or as the case may be ;)

Mode of branding.

Cargo No. 1. those of the best quality, caught in the right season, to be most approved, and free from damage, shall be branded Cargo No. 1 ; those which remain after the best have been selected, being sweet and free from taint, rust or damage shall

Cargo No. 2. be branded Cargo No. 2 ; and there shall be a third quality, which shall consist of the thinnest and poorest of those that are sweet and wholesome, which shall be branded Cargo No. 3. And the inspector shall also brand in plain legible letters

[Mass. Stat. Mar. 15, 1805, § 1.]

Cargo No. 3. on the head of each and every cask, in which inspected merchantable fish or whole fish are packed or repacked, the weight, and initials of his christian name, with his surname at large, the name of the town for which he is appointed, and the word *Maine* annexed : And each cask shall be filled with fish of one and the same kind : and if any person shall intermix, take out or shift any inspected fish which are packed and branded as aforesaid, or put in other fish for sale or exportation contrary to the true intent and meaning of this act, he or they shall forfeit and pay fifteen dollars for each and every package so altered : *Provided however*, If any casualty shall render it necessary to repack a cask of inspected fish, it may in all cases be done by an inspector of such fish. And if any person shall sell or export or cause to be sold or exported, within or from this State, any tainted or damaged fish, he shall forfeit and pay ten dollars for every hundred weight that shall be thus sold or exported.

[Additional brands provided ; see ch. 352, vol. 3, p. 198 ; and ch. 379, vol. 3, p. 229.]

Penalty for fraudulently mixing or shifting inspected fish.

Penalty for exporting damaged fish.

Cod fish, haddock, &c. how to be packed. Quality of casks, &c.

[Mass. Stat. June 17, 1819, § 2.]

Inspectors to brand the weight, &c. on casks.

[\*645]

Small fish, whole, how to

SECT. 5. *Be it further enacted*, That all cod fish, haddock, hake, pollock and halibut pickled and hereafter offered for sale, shall be packed in casks of the contents required by the second section of this act, each barrel to contain two hundred and twenty-five pounds, and each half barrel to contain one hundred and twelve and an half pounds, agreeably to the rules of packing in the fourth section of this act, with sufficient salt to preserve the same. And it shall be the duty of the inspectors to brand with plain and legible figures,\* the weight of the aforesaid five kinds of fish in addition to the brands required by the fourth section of this act.

SECT. 6. *Be it further enacted*, That all small fish which are usually packed whole with dry salt, shall be put in good



casks of the size and materials mentioned in the second section of this act; said fish shall be packed close in the cask and well salted; the casks shall be filled full with the fish and salt, putting no more salt with the fish than is necessary for their preservation; and the inspector shall brand all casks containing such inspected whole fish with the name of the fish, and the quality as described in the fourth section of this act.

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be packed, and in what casks.

[Mass. Stat. June 23, 1803, § 4; & Mar. 6, 1810, § 4.]

SECT. 7. *Be it further enacted*, That all smoked alewives or herrings† shall be divided and sorted by the inspector, and denominated according to their quality, first sort, and second sort; the first sort shall consist of all the largest and best cured fish, of not less than eight inches long; second sort, of the smaller, but well cured fish, of not less than seven inches long; and in all cases the following shall be taken out as refuse; all those which are belly broken, tainted, scorched or burnt, slack salted, or not sufficiently smoked. And each box of alewives or herrings so inspected, shall be branded on the top, by the inspecting officer with the first letter of the christian name, and the surname at length, of the inspector who inspected the same; and in like manner the name of the owner thereof, with the name of the town where it was inspected, with the addition of MAINE, and also with the quality of first sort, or second sort.

Smoked alewives and herrings how sorted, &c.

[†See onward, ch. 178, in this volume; also ch. 488, vol. 3, p. 335.]

Boxes how to be branded.

SECT. 8. *Be it further enacted*, That no pickled fish in casks, and no smoked alewives or herrings in boxes, shall be exported from this State by water, unless the master or owner of the vessel shall produce to the Collector, or other officer authorized by the United States to clear out vessels, a certificate from the inspector, that the same has been inspected, packed and branded according to the directions of this act: and the certificate shall express the number of barrels, half barrels and tierces, and the number of boxes thus shipped, the kind and quality of the fish they contain, with the name of the master and owner, and the name of the vessel in which such\* fish are received for exportation. And such master or owner of every vessel shall take and subscribe the following oath or affirmation, before the officer authorized as aforesaid;

Pickled fish, in casks, and smoked herring, &c. in boxes not to be exported, unless certificate of inspection be produced to collector.

Substance of certificate.  
[Mass. Stat. June 3, 1803, § 5; and Mar. 6, 1810, § 5.]

[\*646]  
Master or owner to make oath thereto.

I, A. B. do swear, or affirm, (as the case may be,) according to the best of my knowledge and belief, that the certificate hereunto annexed, contains the whole

Form of oath.



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quantity of pickled and barrelled fish, and of smoked alewives and herrings on board the ———, ———, master; and that no fish, smoked alewives or herrings are shipped on board said vessel, for the ship's company, or on freight or cargo, but what are inspected and branded according to the laws of this State. So help me God; or this I do under the pains and penalties of perjury, (as the case may be)

Pickled or smoked fish, put on board vessel for exportation, not being inspected, may be seized by warrant from Justice.

[Ib. § 9.]

Power and duties of inspectors.

SECT. 9. *Be it further enacted*, That if any pickled or barrelled fish, or any smoked fish shall be put on board of any boat, vessel, or carriage of conveyance, within this State, with intent to sell or export the same, unless said fish shall have been inspected, and the casks and boxes containing the same shall have been branded agreeably to the provisions of this act, it shall be lawful for any Justice of the Peace in the same county, upon complaint made to him, to issue his warrant to the Sheriff or his deputy, or to any Constable of the town where such boat, vessel or carriage of conveyance may be, requiring them respectively to seize and secure said fish, and carry the same to the inspector nearest the place where said boat, vessel or carriage may be; and said inspector is hereby authorized and required to open and inspect, and to pack and brand the same in the same manner as is prescribed in this act. And it shall be lawful for said inspector to detain the said fish until the expenses and charges of seizure, inspection, packing, and all other charges arising from such seizure, shall be paid. And it shall be the duty of every person, when required, to give necessary aid to the officer having such warrant, on pain of forfeiting five dollars for his refusal, to be recovered by action of debt, or on the case, before any Court proper to try the same; and by any person who will prosecute therefor.

Fish brought into the State, not to be sold, unless inspected according to this act.

[\*647]

Penalty for violation.

[†They may be exported; see ch. 276, vol. 3, p. 103.]

How recovered.

SECT. 10. *Be it further enacted*, That no pickled or smoked fish, which shall be brought into this State from any other State\* or Government,† shall be sold or offered for sale before the same shall have been regularly inspected according to the provisions of this act; and each and every person who buy or sell, or offer for sale [ANY] pickled or smoked fish which shall be brought into this State from any other State or Government, before the same is regularly inspected as aforesaid, shall severally forfeit and pay five dollars for each and every hundred pounds weight, so bought or sold; to be recovered by any person who shall prosecute for the same,



by action of debt, or on the case, before any Court proper to try the same. CH. 150.

SECT. 11. *Be it further enacted*, That if any master of a vessel or other person shall put or receive on board any vessel or other carriage of conveyance to transport the same from this State, any pickled or whole fish packed in casks which are not inspected and branded in manner by this act prescribed, he or they, on conviction, shall forfeit and pay not less than five dollars, nor more than ten dollars for each and every hundred pounds of such uninspected fish (b).

Penalty for master receiving on board a vessel, &c. fish not inspected, &c.

[Mass. Stat. June 23, 1803, § 6; and Mar. 6, 1810, § 6.]

SECT. 12. *Be it further enacted*, That no smoked alewives or herrings which shall not have been inspected and branded agreeably to the provisions of this act, shall be exported from this State, under a penalty of two dollars for each box so exported; nor shall any alewives or herrings be taken from any box so inspected and branded, and others of an inferior quality be put in their place, with intent to deceive or defraud any person in the sale of the same, under a penalty of five dollars for each box so changed.

Penalty for exporting smoked alewives, or herring, not inspected and branded.

[See ch. 276, vol. 3, p. 276; and act passed March 4, 1833.]

SECT. 13. *Be it further enacted*, That if the inspector shall brand any cask, the contents of which he has not inspected, packed, salted and coopered, or any boxes of smoked alewives or herrings, which he has not inspected, packed and nailed according to the true intent and meaning of this act, or if he shall permit other persons to use his brands in violation or evasion thereof, he or they so offending, shall forfeit and pay for every cask and box so branded, the sum of twenty dollars (c).

Penalty for inspectors branding casks, &c. not inspected; or permitting others to use his brands.

[Mass. Stat. June 23, 1803, § 8; and Mar. 6, 1810, § 8.]

SECT. 14. *Be it further enacted*, That all persons within this State who shall have fish for packing and pickling either in bulk or in casks to the amount of twenty barrels in one\* season, shall furnish the inspector with a branding iron, containing the first letter of the owners christian name, and his

Persons in certain cases to furnish inspectors with brands.

[\*648]

(b) "To be recovered by action of debt, one half to the use of the town, city or plantation, in which the offence may have been committed, and the other half to the use of the person who may sue therefor." See statute passed February 21, 1833.

(c) Inspectors interested, are forbidden to inspect and brand. See act passed March 9, 1832, ch. 86.



**CH. 150.** surname at large ; and the inspector shall cause the names of such owners to be fairly branded on the head of every cask of their inspected fish ; and if any such owner of fish shall refuse or neglect to furnish such brand, he shall forfeit and pay for such neglect and refusal, not less than five dollars, nor more than twenty dollars ; and all kinds of pickled fish which are packed in tierces, barrels or half barrels for consumption within this State, and which are not subject to be inspected and branded as provided for exportation, shall, however, be packed with only one kind of fish in each cask, and there shall be the same weight in each cask as is provided by the fourth section of this act ; and for intermixing different kinds of fish in the same cask, or for short weight in any cask, the owners or venders shall be subjected to the same penalties and forfeitures as are provided by this act for the like offence in the inspected pickled fish.

[Mass. Stat.  
Mar. 15, 1803,  
§ 2; and Mar.  
6, 1810, § 11.]

Pickled fish for  
home consump-  
tion, how to be  
packed.

Penalties and  
forfeitures, how  
recovered.

[Ib. Mar. 6,  
1810, § 11.]

Fees for certifi-  
cates, &c. to  
be paid by the  
exporter or  
purchaser.

[Mass. Stat.  
June 23, 1803,  
§ 7.]

Inspectors in  
office continu-  
ed until April  
10, 1821.

**SECT. 15.** *Be it further enacted,* That all penalties and forfeitures arising by force and virtue of this act, except the penalties of five dollars mentioned in the ninth and tenth sections of this act, shall be recovered by action of debt in any Court proper to try the same ; one moiety thereof for the use of the town or plantation wherein the offence shall be committed, and the other moiety to him or them who shall sue for the same.

**SECT. 16.** *Be it further enacted,* That the charges for certificates, inspecting and branding, shall be paid by the exporter or purchaser, in addition to the purchase or cost of the fish ; and bills for the legal fees of inspection and certificates, shall in the first instance be paid by the original owner of said fish, or by the person employing the inspector ; and all such owners or employers are hereby empowered to demand and recover the amount of said bills from the subsequent purchaser or exporter.

**SECT. 17.** *Be it further enacted,* That the inspector and his deputies legally appointed and now in office shall continue to hold and enjoy their respective offices until the tenth day of April next.

**[\*649]** **SECT. 18.\*** *Be it further enacted,* That every inspector of fish appointed in this State, shall, on being qualified for



such office, pay to the Treasurer of the town or plantation in which he shall reside, five dollars ; and it shall be the duty of such Treasurers to pay over all monies so received to the Treasurer of this State, on or before the twentieth day of January annually.

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Inspectors to pay duty of five dollars.

SECT. 19. *Be it further enacted*, That the inspectors shall be paid for each certificate for exportation, seventeen cents ; and for inspecting and branding each and every cask of fish as directed by this act ; for each tierce ten cents, for each barrel seven cents, for each half barrel four cents, for each box of smoked herrings or alewives two cents ; exclusive of the labour and expense of packing and coopering ; and the fees for inspecting and the expense for packing and coopering shall be paid by the seller. [Approved March 22, 1821.]

Inspector's fees.

Additional Act, ch. 185, Vol. 3, p. 5.

## Chapter 151.

AN ACT to ascertain the quality of Pot and Pearl Ashes, and for the more effectual inspection of the same.

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That there shall be an inspector of pot and pearl ashes for the State, who shall be well skilled in the knowledge and properties of the same, to be appointed by the Governor, with the advice and consent of the Council, and to be by them removable at pleasure ; and who, before he shall enter upon the duties of his office, shall give bond with sufficient sureties, to the Treasurer of the State, in the penal sum of three thousand dollars for the faithful discharge of his duty, and shall *also* be sworn faithfully to perform the same. And such inspector shall have power, when so qualified, to appoint, and shall appoint deputy inspectors in every sea port town where pot and pearl ashes are exported, and such other places as he shall judge necessary ; for whom he shall be answerable, and shall take bonds from them with sufficient surety or sureties, and they shall also be sworn to the faithful discharge of their duty.

Governor to appoint a State inspector of pot and pearl ashes,

[Mass. Stat. June 17, 1791, § 10.]

who shall give bond,

and be sworn, and appoint deputy inspectors,

who shall give bonds to him, and be under oath.



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SECT. 2.\* *Be it further enacted,* That every cask in

Size and quality of pot and pearl ashes casks.

[\*650]  
[Ib. § 2.]

which pot or pearl ashes shall be packed for exportation, shall be made of sound and well seasoned oak or white ash staves and heading, full bound, twenty-nine inches in length, nineteen inches diameter in the head, and of such weight in proportion to its contents, as will amount, as near as may be, to fourteen per centum tare thereon.

Manufacturer of pot and pearl ashes to brand his name, &c. on casks.

[Ib. § 9.]

Penalty for neglect.

SECT. 3. *Be it further enacted,* That every manufacturer of pot and pearl ashes within this State shall brand each cask containing the same with the initial letters of his christian name, and his surname at full length, with the name of the town where the same shall be manufactured, before the same shall be removed from the manufactory, under the penalty of one dollar for each cask so removed without being previously branded as aforesaid.

No person to ship for exportation any pot or pearl ashes before inspection.

[Ib. § 1 & 3.]

Manner of inspecting, marking and branding.

SECT. 4. *Be it further enacted,* That no person or persons whatsoever shall ship any pot or pearl ashes, for exportation, before he shall first have submitted the same to the view and examination of the inspector or his deputy, who shall be appointed as hereinafter mentioned; who shall start the same out of the casks, and carefully examine, try and inspect the same, and sort the same in three different sorts, if necessary; that the said inspector shall put each sort by itself in tight new casks, well hooped and coopered, which he shall distinguish by the words, first sort, second sort, or third sort, with the words pot or pearl ashes, as the same may be, branded in plain legible letters, together with the letters of his name, and the place where such pot or pearl ashes shall be inspected, as also the word "*Maine*" at full length on each cask: and the said inspector, or his deputy at the time of starting pot or pearl ashes for inspection, shall weigh the cask or casks and mark the weight with a marking iron on each head thereof.

Inspector shall weigh casks and mark the weight.

Inspector may enter vessels, &c. in search of casks not branded, &c.

[Ib. § 4.]

SECT. 5. *Be it further enacted,* That every such inspector shall have full power and authority by virtue of this act, and without further or other warrant, to enter on board any ship or vessel whatsoever, lying and being in the harbour where such inspector is authorized to inspect pot or pearl ashes, shipped or shipping on board any such vessel for ex-



portation from this State: and if said inspector shall, on search,\* discover any cask or casks of pot or pearl ashes, not branded as before directed, the person or persons so shipping or having shipped the same, shall forfeit all and every such cask or casks of pot and pearl ashes, so shipped or shipping, and not branded in the manner herein before directed. And such inspector, or his deputy, shall and may seize and carry away and secure the same for trial, and require necessary aid for that purpose, which it shall be the duty of every person so required to give on pain of forfeiting the sum of seven dollars for his refusal or neglect. And the master or commander of any such vessel, who shall receive on board any such cask or casks of pot or pearl ashes, not branded as aforesaid, shall forfeit the sum of twenty dollars for each cask so received. And if any master of any ship or vessel, or any of his servants or seamen, shall obstruct or hinder the said inspector in making such search, as aforesaid, every person so offending shall forfeit for each offence the sum of thirty dollars.

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if any be found,  
to be forfeited.  
[\*651]

Inspector may  
seize the same  
for trial.

Penalty on  
master of ves-  
sel for receiv-  
ing such pot  
and pearl ash-  
es, on board,  
not branded.

SECT. 6. *Be it further enacted,* That if any inspector of pot or pearl ashes (according to the duties of this act) shall, on application made for the examination of any pot or pearl ashes aforesaid, unreasonably refuse, neglect or delay to proceed to such examination and inspection for the space of three hours after such application so made to him, the inspector so refusing, neglecting or delaying to make such examination or inspection, shall, for each offence forfeit the sum of three dollars.

Penalty on in-  
spector for re-  
fusing or delay-  
ing inspection.

[1b § 5.]

SECT. 7. *Be it further enacted,* That if any person shall brand any cask of pot or pearl ashes manufactured by himself, with the name of any other person than his own, or shall brand any such cask manufactured by another person, with his own name; or shall counterfeit any brand belonging to, or proper to be used by the said inspector, or any of his deputies, or shall impress or brand any cask of pot or pearl ashes with any brand or brands of such inspectors, or with any counterfeited as aforesaid, he shall forfeit and pay for each offence the sum of two hundred dollars.

Penalty for  
false and fraud-  
ulent branding,

[1b. § 6.]

or counterfeit-  
ing brands.

SECT. 8. *Be it further enacted,* That if any person shall



**CH. 151.** empty any cask or casks of pot or pearl ashes, inspected and branded as by this act is required, and put in any other pot\* and pearl ashes for sale or exportation, without first cutting out the said brand marks, the person or persons so offending shall for each cask, forfeit and pay the sum of two hundred dollars.

Penalty for fraudulently shifting contents of casks.  
[\*652]  
[Ib. § 7.]

Fines and forfeitures, how recovered.  
[Ib. § 8.]

**SECT. 9.** *Be it further enacted,* That all fines and forfeitures mentioned in this act, above the sum of twenty dollars, and under sixty dollars, shall and may be sued for and recovered with costs, by any person to his own use: But if the sum shall amount to sixty dollars, or more, then one half to his own use, and the other half to the use of the State, and in both cases by action of debt in the Circuit Court of Common Pleas, in the county where the offence shall be committed, with liberty of appeal as in other civil actions. But if the forfeiture shall be twenty dollars or under, then it may be sued for by such action, for the use of the prosecutor, before a Justice of the Peace, with like liberty of appeal. And all casks of pot or pearl ashes, forfeited and seized as aforesaid, may be prosecuted to condemnation by the officer seizing the same, by libel before the Circuit Court of Common Pleas in the county where seizure shall be made, if above the value of twenty dollars, or before a Justice of the Peace, if under that sum, with liberty of appeal to the Supreme Judicial Court or Circuit Court of Common Pleas, respectively, as the case may require, and after condemnation, the same shall be sold at public vendue, by such officer; and after payment of all charges, one half of the remainder shall be by him paid into the Treasury, for the use of the State, and the other half be for the use of such officer.

Fees of inspectors and deputies.  
[Ib. § 1.]

**SECT. 10.** *Be it further enacted,* That the inspector of pot and pearl ashes, or his deputy, shall have and receive for inspecting the same, the sum of seven cents for every hundred weight so inspected, and also the further sum of eight cents for coopering and nailing each cask and putting the same in shipping order, to be paid by the purchaser.

Deputies' percentage to inspector limited.  
[Ib. § 10.]

**SECT. 11.** *Be it further enacted,* That the said inspector shall not in future, receive from any deputy he has, or shall appoint, more than seven and an half per cent. on the



sum first above mentioned, and no part of the sum allowed for cooperage.

SECT. 12.\* *Be it further enacted*, That it shall be the duty of the inspector of pot and pearl ashes annually in the month of May to make a return of the number of casks of pot and pearl ashes, specifying the number under each brand, and the weight of each specific quality inspected by him or his deputies; said returns to be made up to the first day of May of each year, and to be transmitted to the office of the Secretary of this State, in the course of the same month. And the inspector of pot and pearl ashes shall require of his deputies to make the returns to him necessary to carry into effect the foregoing provision.

SECT. 13. *Be it further enacted*, That the Inspector General and his deputies, legally appointed, and now in office, shall continue to hold and enjoy their respective offices, until others shall be appointed in their stead. [Approved March 10, 1821.]

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[\*653]

Inspector general to make annual return to secretary of State in May. Substance of such return.

[Mass. Stat. Jan. 20, 1816.]

His deputies to make return to him.

Inspectors, &c. now in office to continue until, &c.

## Chapter 152.

AN ACT to provide for the inspection of Hops for exportation.

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That there shall be an inspector of hops (a) for this State, who shall be appointed by the Governor, with advice of Council, who shall be removable at pleasure, who shall give bond, with sufficient sureties to the Treasurer of this State, in the penal sum of three thousand dollars, for the faithful discharge of his duty, and shall be sworn faithfully to perform the same; and such inspector shall have power to appoint deputy inspectors, who shall be removable by him at pleasure, for whose conduct he shall be answerable, and from whom he may require sufficient bonds for the faithful discharge of their duty.

Inspector of hops to be appointed by governor, &c.

[Mass. Stat. Jan. 24, 1806, § 8.]

Inspector to give bond,


and appoint deputies, who are also to give bond.

SECT. 2. *Be it further enacted*, That it shall be the duty

(a) The duty imposed upon the commission of the Inspector General of hops, by ch. 102, vol. 1, p. 518, is abolished by ch. 417, vol. 3, p. 264.



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Duty of inspectors,

[Ib. § 4.]

[\*654]  
to mark bags  
of hops, &c.

Inspector's  
fees.

Quality of merchantable hops.

[Ib. § 2.]

No hops to be  
shipped or exported  
without inspection.

[Ib. § 1.]

Masters of vessels  
to produce  
to collector, a

of the inspector or one of his deputies to examine the contents of every bag or pocket of hops, intended to be exported, in such manner as to ascertain the quality of such hops, and if found merchantable, as before prescribed, and that they are firmly packed, and have been so packed at least ten days previous to said examination; and that the bags or pockets\* are such as have been before prescribed; he shall distinguish the same by marking them in legible characters, with the words first sort, or second sort, or refuse, as their quality may be; he shall add thereto the date of the year of which, in his opinion, they are the growth, together with the initials of his (the inspector's) christian, and the whole of his surname, and the word MAINE; for which inspecting, marking, weighing and delivering an attested schedule of the same, he shall receive at the rate of ten cents for every hundred pounds weight so inspected, to be paid to him by the purchaser, exclusive of the charges of repacking, and mending the bags or pockets, when necessary, which shall be paid by the vender of the hops; and exclusive also of storage, should said hops be stored by said inspector more than thirty days after being inspected.

SECT. 3. *Be it further enacted,* That hops shall not be deemed merchantable, unless they have been well picked, are free from stems and leaves, and dried on a kiln, with charcoal fire; and the bags or pockets in which they are packed shall be made sufficiently strong to preserve the hops from damage, and of such a texture as will fairly receive the marks of the cultivator and inspector; and the bags or pockets shall be marked with the name of the cultivator and the town in which he lives.

SECT. 4. *Be it further enacted,* That hops shall not be shipped or exported from this State, except they are of the quality hereinafter mentioned, and have been duly inspected and marked agreeably to the provisions of this act; and that the hops so inspected shall be in square bags or pockets; each bag to contain four hundred weight, and each pocket two hundred weight of merchantable hops, as near as may be.

SECT. 5. *Be it further enacted,* That no hops shall be exported from this State, unless the master or owner of the



vessel, in which such hops are shipped, shall produce to the Collector, or other officer authorized by the laws of the United States to clear out vessels, a certificate of the inspector or one of his deputies, for which he shall be allowed to charge twenty-five cents to be paid by the shipper, that the same has been duly inspected, marked and\* weighed, agreeably to the directions of this act; which certificate shall express the number of bags, or pockets of each sort of hops, with the weight of each bag or pocket; and the master or owner of every vessel in which hops are so exported, shall, on producing such certificate, take and subscribe the following oath, viz :

“ I do swear, that according to the best of my knowledge and belief the certificate hereunto annexed contains the whole quantity of hops on board the ———, of which ——— is master; and that there are no hops on board said vessel, for the use of the ship's company, on freight, or on cargo, but what have been inspected and marked according to the law of this State. *So help me God.*”

SECT. 6. *Be it further enacted*, That if any person or persons shall export or ship for exportation out of this State, any hops not inspected and marked as by this act is directed, every such exporter or shipper, and the master of every vessel, having on board such uninspected hops, shall, on conviction respectively forfeit and pay the sums following; the owner or exporter shall pay the sum of twenty dollars; the master of every vessel having the same on board, the sum of ten dollars, for every bag or pocket exported or shipped for exportation. And it shall be lawful for the inspector or any of his deputies, on information given of any hops being put on board any vessels as aforesaid, not inspected and marked, as required by this act, to issue a warrant directed to the Sheriff or his deputy, or to a Constable, requiring them respectively to make a seizure of any such hops, not inspected and marked as aforesaid, and to secure the same, in order for trial; and said officers are hereby respectively required and empowered to execute the same; and it shall be the duty of any person, when requested, to give the necessary aid for that purpose on pain of forfeiting five dollars for his refusal: *Provided always*, That nothing in this act contained, shall be construed to effect any hops shipped coastwise within this State, for the purpose of being inspected and marked as

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certificate of inspection, before clearance.

[Ib. § 5.]

[\*655]

Oath of master or owner.


Penalties for exporting hops unless inspected and marked.

[Ib. § 13.]

Inspector may seize hops on board vessels if not inspected.

Proviso for hops shipped coastwise for inspection.



**CH. 152.**  **[\*656]** aforesaid, in which case a certificate from the owner shall accompany the same so shipped coastwise for the purpose aforesaid, setting forth the owner's name, the number of\* bags, pockets or packages and the name of the inspector, to whom they are sent for inspection.

Penalty for delay of inspection.

[Ib. § 6.]

**SECT. 7.** *Be it further enacted,* That if an inspector of hops, on application made to him to examine any hops, shall unnecessarily neglect or delay to examine, mark and weigh them, the inspector so neglecting or delaying shall for each offence forfeit and pay the sum of five dollars.

Penalty for counterfeiting inspector's mark.

[Ib. § 7.]

**SECT. 8.** *Be it further enacted,* That if any person shall counterfeit or alter any mark, belonging to, or proper to be used by the inspector of hops, his deputy or deputies; or shall mark any bag or pockets of hops with any letters or marks aforesaid, he shall forfeit the hops so marked and for each offence the sum of ten dollars.

Penalty for shifting hops from one bag to another.

[Ib. § 8.]

**SECT. 9.** *Be it further enacted,* That if any person shall empty any bag or pocket of hops, marked as by this act is required, and put in any other hops, for sale or exportation, without first cutting out said marks, the person or persons so offending shall for each offence forfeit the sum of five dollars.

For fraud in inspector or his deputies.

[Ib. § 10.]

**SECT. 10.** *Be it further enacted,* That if the inspector of hops, or any of his deputies, shall be guilty of any fraud in inspecting hops, contrary to the true intent and meaning of this act, or shall put their marks on any bag, pocket or package of hops, which have not been actually examined, inspected and found merchantable, he or they shall forfeit and pay twenty dollars for each and every bag, pocket or package so falsely marked.

For mixing, &c.

[Ib. § 11.]

**SECT. 11.** *Be it further enacted,* That if any person shall intermix, take out or shift any hops from any bag, or pocket inspected and marked as by this act is required, or shall put in any other hops for sale or exportation, contrary to the true intention of this act, the person or persons so offending shall forfeit and pay twenty dollars for every such offence.

Penalties how recovered and appropriated.

[Ib. § 12.]

**SECT. 12.** *Be it further enacted,* That all penalties and forfeitures, arising in virtue of this act, shall be recoverable by action of debt or information in any Court proper to try



the same; one moiety to the use of the town wherein the offence shall be committed, the other moiety to him who shall sue for the same.

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SECT. 13.\* *Be it further enacted*, That the inspector of hops shall be entitled to receive from his deputies one fifth part of all the fees said deputies may receive in the execution of this act.

[\*657]  
Inspector entitled to one fifth of his deputies' fees.  
[Ib. § 9.]

SECT. 14. *Be it further enacted*, That it shall be the duty of the inspector of hops, annually in the month of May, to make a return into the office of the Secretary of this State, of the whole number of bags marked by him, of the different qualities, and the weight of each quality respectively, inspected by him or his deputies; said returns to be made up to the first day of May of each year. And the inspector of hops shall require of his deputies to make the returns to him necessary to carry into effect this provision.

Inspector to make annual return to Secretary of State, in May.

[Mass. Stat. Jan. 20, 1816.]

Deputies of inspector to make returns to him.

SECT. 15. *Be it further enacted*, That the Inspector General and his deputies legally appointed and now in office, shall continue to hold and enjoy their respective offices, until others shall be appointed in their stead. [Approved February 20, 1821.]

Inspectors now in office to continue, &c.

## Chapter 153.

AN ACT for the better making and measuring of Malt.


SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That no malster or malt maker shall deliver, vend or pass away any malt by him made or caused to be made, before the same be well dried and cleansed by screening of it from the dust and taile which arises in the making, drying and ordering of it in his hands, on pain of forfeiting twenty cents per bushel for each bushel by him delivered, sold or passed away, not being so cleansed and dried, upon conviction thereof before any Justice of the Peace, where the forfeiture shall not exceed the sum of five dollars; or if above, before the Circuit Court of Common Pleas holden within the county: one moiety of such forfeit-

Malt to be dried and cleansed before sold.

[Mass. Stat. 1700, § 1.]

Penalty for neglect.



CH. 153.  ure to be unto the use of the poor of the town where the offence is committed, and the other moiety to him or them that shall complain or inform and sue for the same. And such Court or Justice respectively, are hereby empowered, in case such maltster shall stand to justify that his malt is\* well dried and cleansed as aforesaid, to nominate and appoint three or more credible, skilful persons to view and judge thereof upon their oaths ; and to administer an oath to them to be indifferent and impartial therein. And no malt made of barley shall be accounted merchantable, but such as shall be well cleansed from the dust, oats, tares and cockle. And every person that shall offer and expose to sale any barley malt, for merchantable not being cleansed as aforesaid, shall forfeit and pay the sum of twenty cents a bushel, for each bushel so offered or exposed to sale, being thereof convicted in manner as is herein before provided, to be applied to the use before mentioned.

Uncleansed  
malt not mer-  
chantable.

Duty of mas-  
ters of vessels  
carrying malt.

[Ib. § 2.]

SECT. 2. *Be it further enacted*, That every master of any vessel that shall receive on board his vessel any malt to be transported to a market, shall take effectual care, and make sufficient provision for the keeping of merchantable malt, separate and apart by itself, that it be not intermixt with what is unmerchantable, on pain of losing and forfeiting the value of all the freight to be paid for the malt so mixed ; to the use of the poor of the town where such malt shall be delivered, upon conviction thereof as aforesaid : and shall be further liable to make good to the shipper or owner of all such merchantable malt mixt as aforesaid, all loss and damage that he shall sustain thereby : to be recovered by action therefor to be brought in any Court proper to try the same.

Mode of meas-  
uring.

[Ib. § 3.]

SECT. 3. *Be it further enacted*, That in the measuring of malt the strike shall be carried softly and sawing, any law, usage or custom to the contrary notwithstanding. [Approved February 28, 1821.]



## Chapter 154.

## CH. 154.

AN ACT for regulating the exportation of Tobacco and the weight of Onions in bunches.

SECT. 1. **BE** it enacted by the Senate and House of Representatives in Legislature assembled, That the Governor, by and with the advice of Council, be, and is hereby empowered to appoint, in such seaport and other exporting towns within\* this State, as there shall be occasion, one or more skilful and disinterested person or persons to be inspectors of tobacco that shall be exported from this State, who shall be sworn to the due and impartial execution of their trust; and their duty shall be to inspect all tobacco that shall be intended to be laden on board of any vessel for foreign exportation, or that shall be intended to be transported by land or water, to either of the United States; and every such inspector is hereby required and authorized, to open the cask containing the said commodity, intended to be exported as aforesaid, and inspect it in four equal divisions; that is to say, they shall take the casks from the tobacco, and with an iron bar, or other instrument, lift one quarter, and then go through the whole, until it shall be examined in four different parts, and see that it be properly dry, well cured, not rotten or damaged, and of the weight and packed in such casks as are herein after mentioned; and such part as appears to be damaged, or rotten, or unfit for exportation, shall be burned; and on every cask containing the said quantity, which by such inspection, shall, according to the inspector's best judgment, appear to be well cured, and not rotten or damaged as aforesaid, he shall mark or impress with a burning iron the letters A. P. with the name of the town, where it shall be thus approved, the name of said inspector at large, and the letter I. at the end thereof denoting that the same has been inspected and approved.

Inspectors of tobacco to be appointed by the governor.

[\*659]

To be sworn.

[Mass. Stat. Nov. 8, 1785, § 2.]

Their duties and powers.

To mark casks, and how.

SECT. 2. *Be it further enacted,* That no tobacco shall be shipped or exported from this State, but such only as shall have been inspected, and found to be well cured, and fit for foreign markets and packed in strait casks; said casks shall be four feet four inches in length, and two feet seven inches diameter at the head, containing not less than nine hundred,

No tobacco to be exported unless inspected.

Size and quality of casks and half casks. [Ib. § 1.]



**CH. 154.** and not more than fourteen hundred pounds weight each ; or if packed in half casks to contain not less than four hundred, nor more than six hundred pounds weight in each, unless such casks of tobacco shall appear to have been inspected and marked agreeably to the laws of some other State.

Penalty for putting or receiving any tobacco on board any vessel bound out of this State, unless duly inspected, marked, &c.

[\*660]  
[Ib. § 5.]

Tobacco to be forfeited, &c.

Justice may issue warrant to seize and hold it for trial.

Penalty for shifting contents of casks, and putting in tobacco not inspected.

[Ib. § 6.]

Penalty on inspector for neglect or fraud in inspecting or branding.

[Ib. § 7.]

**SECT. 3.** *Be it further enacted,* That if the owner of any tobacco, or any other person employed by him, shall presume to lade or put on board any vessel bound to any port without\* the State, any tobacco other than such as shall have been approved by an inspector and contained in casks not having the aforesaid marks, stamps or brands ; or if any master of a ship or other vessel, or other officer or mariner shall receive on board any such, the offender or offenders shall incur the penalty of thirty dollars for each cask of tobacco, to be sued for and recovered in any Court of Record within this State proper to try the same ; and all such tobacco laden or received on board as aforesaid, shall be forfeited. And it shall be lawful for any Justice of the Peace, upon information given of any tobacco, put on board any such ship or other vessel as aforesaid, not duly marked or branded, to issue his warrant, directed to the Sheriff, his deputy, or a Constable, requiring them respectively to make seizure of any such tobacco, shipped and not marked as aforesaid, and to secure the same in order for trial ; and such officers are hereby respectively directed and empowered to execute the same.

**SECT. 4.** *Be it further enacted,* That if after any cask containing tobacco shall have been stamped with the inspector's marks, stamps or brands as aforesaid, any cooper or other person shall presume to shift the contents of such casks, and put therein any tobacco that hath not been duly inspected as aforesaid, such cooper or other person so offending, shall forfeit and pay the sum of fifteen dollars for every cask of tobacco to be recovered in manner as aforesaid.

**SECT. 5.** *Be it further enacted,* That in case any inspector appointed and sworn as aforesaid, shall be guilty of any neglect or fraud, in inspecting any tobacco contrary to the true intent and meaning of this act, or shall mark with their respective brands or stamps any cask containing tobacco,



which they have not actually and thoroughly inspected, and which may be intended for exportation out of this State, he or they shall forfeit and pay the sum of fifteen dollars for every such neglect, or for every cask so falsely marked, to be recovered as aforesaid.

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SECT. 6. *Be it further enacted*, That if any person or persons, not appointed and sworn as aforesaid, shall presume to mark or brand any casks of tobacco as above described, he shall incur the above said penalty of fifteen dollars for every\* cask so marked or branded, to be recovered as aforesaid.

Penalty on persons not appointed, for marking or branding casks, &c.  
[Ib. § 8.]  
[\*661]

SECT. 7. *Be it further enacted*, That each cask before any tobacco be packed therein, shall be weighed by the owner of such tobacco, who shall with a marking iron, mark on one of the heads thereof the full weight of the cask, and the initial letters of his name : and in case he shall falsely mark the same, such owner upon conviction thereof shall forfeit and pay the sum of nine dollars for each cask so falsely marked.

Each cask to be weighed and weight marked.

[Ib. § 9.]

SECT. 8. *Be it further enacted*, That the respective inspectors shall be paid for every cask of tobacco they shall inspect and prove as before directed, twenty cents, provided the number doth not exceed four, and twelve cents for each cask exceeding that number ; inspector's fees to be exclusive of cooperage and to be paid by the shippers.

Penalty for false marking.

Inspector's fees.

[Ib. § 10.]

SECT. 9. *Be it further enacted*, That no vessel on board which any tobacco in casks shall be shipped for exportation, shall be cleared out by the custom house officer, until the master or owner shall have produced a certificate or certificates, from an inspector or prover, appointed and sworn as aforesaid, that said articles have been by him inspected and proved as this act directs ; which certificates shall be granted free from any expense.

No vessel having tobacco on board for exportation, to be cleared out, without certificate of inspection.

[Ib. § 11.]

SECT. 10. *Be it further enacted*, That all penalties and forfeitures arising by force and virtue of this act, shall be one moiety thereof to the use of this State and the other moiety to him or them who shall inform and sue for the same.

Appropriation of penalties.

[Ib. § 12.]

SECT. 11. *Be it further enacted*, That no onions in bunches shall be shipped or exported out of this State, unless

Weight of onions for exportation.



CH. 155. they weigh as follows, viz: rareripes (so called) two and half pounds, and onions from the seed, three and half pounds, per bunch.

[Ib. § 13.]

Selectmen to appoint weighers of onions :

[Ib. § 14.]

to be sworn :

their duties and fees.

[\*662]

Penalty for offering to sell onions in bunches, unless weighed and certified.

Ib. § 15.]

How recovered and applied.

SECT. 12. *Be it further enacted*, That the Selectmen of each town where such onions shall be shipped, are hereby authorized and directed to appoint some suitable person or persons to weigh the same and give certificates of the weight ; which person or persons so appointed shall be sworn to the faithful performance of his or their duty, and shall receive as fees, ten cents for every hundred bunches so weighed and certified, for any quantity not exceeding five hundred bunches, and\* five cents for a greater quantity ; said fees to be paid by the purchaser.

SECT. 13. *Be it further enacted*, That if any person or persons shall presume to expose for sale within this State, any onions in bunches, without first having them weighed as aforesaid, and having obtained a certificate of the same, according to the true intent and meaning of this act, he shall forfeit the same ; one moiety thereof to and for the use of the poor of the town where they may be exposed to sale, the other moiety to him or them who shall inform of the same ; and the Selectmen of such town, or the major part of them, are hereby authorized and empowered to seize the same, and sell them at public auction, and to account with the Overseers of the poor of such towns for the net proceeds of one moiety thereof, and the other to said informant. [Approved February 24, 1821.]

## Chapter 155.

AN ACT regulating the Exportation of Flax Seed.

Governor to appoint surveyors of flax seed.

[Mass. Stat. Mar. 9, 1784, § 1.]

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That the Governor by and with the advice and consent of the Council, be and is hereby empowered to appoint, in such seaport towns within this State as there shall be occasion, one or more skilful



and disinterested person or persons to be surveyors, for the surveying and proving flax seed, who shall be sworn to the due and impartial execution of their trust: and their duty shall be to inspect and survey all flax seed that shall be intended to be laden on board of any vessel for foreign exportation; and every such surveyor is hereby authorized to open the casks containing the said commodity, intended to be exported as aforesaid, and if need be, measure and shift the same into other casks so as thoroughly to examine the whole, and see that it be clear from mixture of wild or other seed or dirt, and of the measure hereafter mentioned. And every cask containing the said quantity which by such survey and examination shall according to the surveyor's best judgment appear to be cleansed as aforesaid he shall\* mark or imprint with a burning iron, the following mark or letters, "Insp." with the name of the town where it shall be thus approved, the name of the said surveyor at large, and the letter S. at the end thereof, denoting that the same has been surveyed and approved.

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Their duty and power.

[\*663]

How they are to mark casks.

SECT. 2. *Be it further enacted*, That no flax seed shall be shipped or exported out of this State, to any foreign port or place without the United States, but such as shall have been surveyed and found to be well cleansed, and in good order and in casks, each cask containing seven bushels and one peck, or in casks containing one half the said quantity each.

No flax seed to be exported to foreign ports before inspected.

[Ib. § 1.]

SECT. 3. *Be it further enacted*, That no vessel on board of which any cask of flax seed is shipped for exportation, shall be cleared out by the Collector, until the master or owner thereof shall have produced a certificate or certificates from some person or persons duly appointed for the purpose of surveying the said articles, that the same have been surveyed as by this act is required; which certificate or certificates shall be granted free from any expense.


No vessel to be cleared, before a certificate of inspection is produced.

[Ib. § 18.]

SECT. 4. *Be it further enacted*, That if the owner of any flax seed or other person employed by him shall presume to lade or put on board any vessel any flax seed other than such as shall have been approved by a surveyor as in this act provided; or if any master of a ship or other vessel or other officer or mariner shall receive on board any such, the offend-

Penalty on owner of flax seed for putting it on board vessel, &c. and on master for receiving it, unless inspected and approved. [Ib. § 5.]



**CH. 155.**  er or offenders shall incur the penalty of twenty dollars for each bushel so shipped ; to be sued for and recovered in any Court of Record within this State proper to try the same ; and all such flax seed, (laded or received on board as aforesaid) shall be forfeited. And it shall be lawful for any Justice of the Peace, upon information given of any flax seed, put on board any such ship or other vessel as aforesaid, not marked as aforesaid, to issue his warrant, directed to the Sheriff or his deputy or Constable, requiring them respectively to make seizure of any such flax seed, shipped and not marked as aforesaid, and to secure the same in order for trial ; and such officers\* are hereby respectively empowered and required to execute the same.

Such flax seed to be forfeited.

Justice may issue his warrant for seizing such flax seed, &c.

[\*664]

Penalty for shifting contents of casks.

Ib. § 6.]

**SECT. 5.** *Be it further enacted,* That if, after any cask or other vessel containing flax seed shall have been approved and stamped with the surveyor's marks, stamps, or brands, any cooper or other person shall presume to shift the contents of such cask or other vessel, and to put therein any flax seed, that has not been duly surveyed and approved as aforesaid, such cooper or other person offending therein, shall forfeit and pay the sum of thirty dollars for every cask so shifted, to be recovered in manner as aforesaid.

Penalty on surveyor for neglect or fraud in surveying, marking, &c.

[Ib. § 7.]

**SECT. 6.** *Be it further enacted,* That in case any surveyor appointed and sworn as aforesaid, shall be guilty of any neglect or fraud in surveying any flax seed, contrary to the true intent and meaning of this act, or shall mark with their respective brands, stamps or marks, any cask containing flax seed which they had not actually and thoroughly surveyed, and which may be intended for exportation out of this State, he or they shall forfeit and pay the sum of thirty dollars for every such neglect, or for every cask falsely marked, to be recovered as aforesaid.

Penalties how applied.

[Ib. § 18.]

**SECT. 7.** *Be it further enacted,* That penalties and forfeitures arising by force and virtue of this act, shall be one half to the use of the State and the other half to him or them who shall inform and sue for the same. [Approved, March 8, 1821.]



## Chapter 156.

Ch. 156.

AN ACT to regulate the manufacture and inspection of Stone Lime and Lime Casks.

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That no stone lime manufactured within this State, shall be sold or exposed to sale, or shipped on board of any vessel, in casks, but such only as is well burnt and pure, and contained in good and sufficient new casks, made of sound and thoroughly seasoned staves and heading; with at least twelve (a) good and strong hoops on each cask, well driven and secured with nails or pins and duly\* inspected: the staves of said casks, to be made of rift† timber and not less than thirty-two inches in length, and if they be hard wood, to be not less than one half of an inch thick, on the thinnest edge, and if they be soft wood, to be not less than five eighths of an inch thick on the thinnest edge; and each of the heads to be not less than three-fourths of an inch thick and well crozed in; and each hoop to be not less than one inch wide in the narrowest part; and each cask to be not less than twenty-eight inches in length between the heads; and each head thereof to be not less than eighteen and one half inches in diameter within the chime; and each cask to have a good and sufficient bilge, and to contain not less than forty gallons, and to be made in a workmanlike manner to hold lime.

Quality of lime and size and quality of lime casks allowed to be sold or shipped.

[\*665]

[†“Or sawed or split;” see act passed Mar. 4, 1833, §1.]

SECT. 2. **Be** it further enacted, That each lime cask shall be branded on the outside at the bilge with the first letter of the christian name, and the first letter of the surname of the manufacturer or original vender thereof; and every such manufacturer or vender who shall sell any lime casks, other than such as are so branded, shall forfeit and pay the

Each cask to be branded and how.

Penalty for selling any not so branded.

(a) It is provided by act passed March 4, 1833, § 2, as follows:—

“ That no lime shall be sold or exposed to sale or shipped on board of any vessel, in casks, unless said casks, each of them, have at least ten hoops, well driven with nails or pins, and duly inspected, with staves not less than thirty inches long; and said casks shall not be less than twenty-seven and a half inches in length between the heads, and seventeen inches in width between the chimes, and capable to contain at least thirty-three gallons each.”

It is provided by § 6 of same act that “ all acts inconsistent with the provisions of this act, be and the same hereby are repealed.”



CH. 156. sum of forty cents for every cask by him sold without being thus branded (b).

Penalty for not having each cask branded on one head at the kiln.

SECT. 3. *Be it further enacted*, That all such casks of lime shall be branded, on one head thereof at the kiln where the same shall be burnt, with the first letter of the christian name, and the surname at length, of the manufacturer or owner thereof; and such manufacturer or owner shall forfeit and pay the sum of fifty cents for every cask of lime, which shall not be thus branded at the time it shall be filled at the kiln as aforesaid.

Three inspectors to be appointed by the Governor at Thomaston, Warren, and Camden, [Mass. Stat. Feb. 22, 1810, § 2, 6, 9.] to be sworn, and give bond to the State treasurer.

[\*666]

SECT. 4. *Be it further enacted*, That there shall be three inspectors of stone lime and lime casks, one for and to reside in each of the towns of Thomaston, Camden and Warren (c); each to be appointed by the Governor, with the advice and consent of the Council and to be by them removable at pleasure; and each of said inspectors shall, before he enters upon the duties of his office, be sworn faithfully to perform the same, and shall give bonds, with sufficient sureties to the Treasurer of the State for the faithful performance thereof, in the sums following, to wit: The inspector in and for\* the town of Thomaston, in the sum of two thousand dollars; the inspector in and for the town of Camden, in the sum of one thousand dollars; and the inspector in and for the town

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(b) It is provided by act passed March 4, 1833, § 4, as follows:—

“That each lime cask shall be branded on the outside at the bilge with the first letter of the christian name, and with the whole of the surname of the manufacturer thereof. And every such manufacturer or any other person, who shall sell or offer or expose in market for sale any lime casks, not branded as aforesaid, shall forfeit for every such cask, so sold or offered or exposed for sale, the sum of forty cents, to be recovered by action of debt, to the use of the person who may sue therefor.”

And by § 6 of the same act, it is provided, that “the second section of an act, passed the fifteenth day of March one thousand eight hundred and *thirty-one*, and all other acts and parts of acts, inconsistent with the provisions of this act, be and the same hereby are repealed.”

It is believed that the foregoing clause of repeal was intended for § 2 of the above act of *twenty-one*, instead of *thirty-one*, as there is no act of the latter date.

(c) Also for the towns of Hope, ch. 238, vol. 3, p. 68; Lincolnville, ch. 305, vol. 3, p. 145, act passed March 4, 1833, § 5; Belfast, Northport, Islesborough, and Prospect, ch. 438, vol. 3, p. 281.



of Warren, in the sum of one thousand dollars; each of which bonds shall be approved by the Court of Sessions in and for the county of Lincoln; and each of said inspectors, when so qualified, shall have power to appoint in and for the town in which he resides, as many deputy inspectors as he shall judge necessary, for whose faithful conduct in the discharge of the duties of their respective offices, the inspector appointing them, shall be answerable; and shall take a bond from each of them to himself in the sum of five hundred dollars; and said deputies shall severally be sworn to the faithful discharge of their duty before they shall enter upon the same. And the Selectmen of each town within this State in which stone lime is manufactured, except the towns of Thomaston, Camden, and Warren, shall appoint one or more inspectors of stone lime and lime casks within and for such town, to be by them removable at pleasure, upon misbehaviour in said office; and each inspector thus appointed by the Selectmen, shall, before he enters upon the duties of his office, be sworn faithfully to perform the same and shall give bonds, with sufficient sureties to the Treasurer of such town, in the sum of five hundred dollars, conditioned for the faithful performance of the duties of his office.

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Each inspector  
to appoint dep-  
uties,

who shall be  
sworn.

Selectmen of  
other towns in  
the State may  
appoint in-  
spectors to be  
sworn and give  
bond.

SECT. 5. *Be it further enacted,* That it shall be the duty of each of the inspectors, appointed by the Governor and Council by virtue of this act, either by himself or his deputy; and of the several inspectors appointed by the Selectmen of towns as aforesaid, to inspect all stone lime, which shall be manufactured within the town wherein such inspector or inspectors reside, at the time the same shall be filled into casks, at the kiln where it is burnt; and to inspect the casks into which the same shall be put; and to see that the said lime and casks do, in all respects, conform to the provisions of this act, and that the casks are well filled with such lime; and to brand each cask, when so filled, on one head thereof, with the name of the town where said lime was burnt and the first letter of the christian name, and the surname at length of \* the inspector or deputy inspector who inspected the same, with the word INSPECTED; and if any such inspector or deputy inspector, shall so brand any lime cask, the contents

Duty of inspec-  
tors and depu-  
ties.

[Ib. § 8.]

[\*667]

Penalty for  
neglect.



**CH. 156.** of which he has not inspected, or shall brand any such cask as aforesaid which, or the contents wherein, do not in all respects conform to the true intent and meaning of this act, or shall permit any other person or persons to use his brands in violation or evasion thereof, every such inspector or deputy inspector, so offending, shall forfeit and pay the sum of one dollar and fifty cents for every cask thus illegally branded by him or with his brands; and shall also be liable to pay all damages which any person may have sustained by reason of such neglect or misdoings; to be recovered by such person by an action of the case in any Court proper to try the same; which action, if the damages sustained be by reason of the neglect or misdoings of any deputy may be brought either against such deputy or against the inspector who shall have appointed him.

Liab. also to damages to the party injured.

[SECT. 6, repealed by new enactment; see ch. 893, vol. 8, p. 247.

It prescribed the compensation of Inspectors.]

Penalty for selling, &c. any lime in other casks than such as are allowed by this act.

[Ib. § 7.]

**SECT. 7.** *Be it further enacted,* That if any person shall sell, or expose to sale or ship, or receive on board of any vessel, in casks, any lime other than such as shall be contained in casks made as aforesaid, and having the aforesaid marks or brands of an inspector or deputy inspector as required by this act respectively, the offender or offenders shall incur the penalty of one dollar and fifty cents for each cask of lime so illegally sold or offered for sale, or shipped or received on board any vessel (*d*).

Penalty for shifting contents of branded casks with fraudulent design.

[Ib. § 8.]

[\*668]

**SECT. 8.** *Be it further enacted,* That if after any cask or casks containing lime, shall have been branded as required by this act, any person shall presume to ship the contents of said cask or casks, and put therein any other lime with a design\* to sell the same, such person so offending shall forfeit and pay the sum of one dollar and fifty cents for every cask of lime so shifted.

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(*d*) It is provided by § 3, of act passed March 4, 1833, as follows:—

“That if any person or persons shall by land or water, introduce into any town, plantation or city of this State, any cask or casks, purporting to be lime casks, not being filled with lime, but having thereon any mark or brand, uneffaced, of any inspector of stone lime or lime casks, the person or persons, so offending shall forfeit one dollar for each and every cask so introduced, to be recovered by action of debt, one half to the use of the State and the other half to the person who may sue therefor.



**SECT. 9.** *Be it further enacted,* That all penalties and forfeitures incurred by virtue of this act shall be recovered by action of debt by and for the use of any person or persons who shall sue therefor, and in any Court competent to try the same.

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Penalties, how recovered, &c.  
[Ib. § 10]

**SECT. 10.** *Be it further enacted,* That when any judgment shall be recovered against any such inspector or deputy inspector for damages or penalties or forfeitures on account of any neglect or misdoings in his said office, and the execution which shall have issued thereon shall be returned unsatisfied, and the said judgment still remaining in full force, the judgment creditor shall be entitled to a certified copy of such inspector or deputy inspector's bond, and shall have a right to commence and prosecute to final judgment, and for his own benefit, an action thereon, in the name of the legal obligee in such bond, the writ being first endorsed by the party for whose benefit the suit is brought, or his agent or attorney, which endorser shall be answerable for all costs; and judgment when for the defendant, shall accordingly be rendered against the party for whose benefit said action was brought.

Any person having recovered judgment for penalties or damages against any inspector or deputy, may sue his bond, in name of the obligee, &c.

**SECT. 11.** *Be it further enacted,* That when judgment is rendered on any bond as aforesaid, execution shall be awarded for the sum found due to the party for whose benefit said action was brought, and being part of the penalty forfeited. And any execution which shall issue on said judgment shall express therein the name of the party for the use and benefit of whom the same was awarded; and if the execution shall be levied on any personal or real estate of the debtor, such levy shall enure to such party for his sole use and benefit, to every intent and purpose.

Form of execution on judgment in such action.

When levied to enure to the use of such creditor.

**SECT. 12.** *Be it further enacted,* That this act shall have effect and be in force from and after the first day of June next, when all laws now in force relating to the subject of this act shall be repealed and cease to have effect: *Provided,* That any inspector or deputy inspector to be appointed by virtue of this act may be appointed and qualified in pursuance\* of the same at any time from and after the passage thereof. And that nothing in this act contained shall in any

When and how this act is to operate.

[\*669]



**CH. 157.** manner affect any contract or agreement which may have been or shall be entered into prior to the fifteenth day of March current by writing under seal for the sale and delivery of lime in casks containing fifty gallons each, at any place out of this State, subsequent to the said first day of June ; and it shall be lawful for any person in pursuance of such contract or agreement to ship, and for the master of any vessel to receive on board lime, contained in casks of fifty gallons, after the said first day of June, the same having been first inspected and branded according to the laws in force in this State at the time of entering into such contract or agreement ; and any inspector or deputy inspector, who shall be appointed by virtue of this act, is hereby authorized and empowered to inspect and brand the same according to the laws now in force. [Approved March 15, 1821.]

Not to affect contracts made prior to 15th of March, 1821, as to lime to be exported, &c.

Additional Act, ch. 238, Vol. 3, p. 68.

## Chapter 157.

AN ACT to regulate the Manufacture of Nails within this State.

Governor to appoint an inspector of nails.

[Mass Stat. Feb 23, 1800, § 1.]  
His duty.

**SECT. 1.** **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That the Governor by and with the advice and consent of the Council, be, and he hereby is empowered to appoint one suitable person to be inspector of nails ; whose duty it shall be to examine every cask of wrought nails which shall be brought to him for inspection, by opening such cask, turning out the nails, contained therein, weighing them, and ascertaining the number of them necessary to make a pound, their quality (both as it respects the workmanship of them, and the iron of which they are made) and shall then proceed and make, mark or brand on the head of such cask, the number thereof, the whole weight of the cask and nails, the weight of the cask only, or the tare, the number of nails necessary to make a pound, and also the quality thereof, to wit ; first sort, second sort, and third sort, or refuse ; and shall also thereupon stamp his name at large, and the title of his office.



**SECT. 2.\*** *Be it further enacted,* That the inspector to be appointed as aforesaid, be and hereby is authorized to appoint, within any town in this State, from which nails are usually exported; a deputy or deputies, who are hereby authorized and empowered to do and perform all the duties incumbent on the said inspector by law, in their respective towns; and the said inspector and his deputies shall severally give bonds to the State with sufficient sureties, in the opinion of the Governor and Council, and in such sum as they may direct, and shall also be under oath, for the faithful discharge of the duties of their office, previous to their entering on the duties thereof, and the bonds so given shall be lodged in the public treasury.

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Inspector to appoint his deputies.  
[\*670]  
[Ib. § 3.]

Inspector and deputies to give bond, and to be under oath.

**SECT. 3.** *Be it further enacted,* That this act shall not constrain the inspector to mark or brand the head of any cask, containing any nails, thirty-five whereof shall weigh more than one pound; but beginning at thirty-five, it shall be his duty to observe five as the progressing number, in the number of nails necessary to weigh a pound, in any cask which he shall be required to inspect; always choosing and marking such progressive number as aforesaid, to which the number of nails in a pound nearest approaches.

Casks which are required to be branded.  
[Ib. § 2.]

**SECT. 4.** *Be it further enacted,* That the inspector shall give a certificate or weight note, expressing the number of the cask, the whole weight, the weight of tare, and the number of nails in a pound, agreeable to his marks of inspection, with the quality of the nails in said casks; and that all wrought nails shall hereafter be sold by the pound or by real thousands, delivering and receiving so many pounds for a thousand as will produce ten net hundreds, agreeable to the marks of inspection; and all nail casks shall be made of seasoned timber.

Inspector to give certificate of number, weight, &c.  
[Mass. Stat. Mar. 4, 1903, § 2]  
Wrought nails to be sold by the pound, or by real thousands.

**SECT. 5.** *Be it further enacted,* That it shall be the duty of said inspector and his deputies respectively, to see that every cask containing such nails, shall be well made, of sufficient strength, and well lined at both heads; the cask to be secured with eight or more good hoops, and to contain not more than three hundred and fifty pounds of nails. And in case any such cask, shall (in the opinion of such inspector

Casks, how to be made and hooped and size of them.

[Mass. Stat. Feb. 29, 1800, § 5.]

Duty of inspector as to bad casks.



CH. 157. or deputy) be unfit for use, it shall be by him condemned ;  
 and\* if any hoops be wanting to complete the number before  
 mentioned, on any cask otherwise fit for use, he shall put on  
 the same, at the expense of the person applying for inspec-  
 tion as aforesaid.

Penalty for ex-  
 porting from  
 this State nails  
 not inspected  
 and marked,  
 &c.

[Ib. § 4.]

How recover-  
 ed.

Like penalty  
 for master of  
 vessel receiv-  
 ing such nails  
 on board.

Nails made in  
 any other State  
 and brought  
 into this, not  
 to be sold here,  
 or put on board  
 any vessel for  
 exportation  
 from this State,  
 until inspected  
 and branded.

Justice may is-  
 sue his war-  
 rant to seize  
 such nails for  
 trial.

[Mass. Stat.  
 Mar. 4, 1803,  
 § 4.]

Penalty for in-  
 spector's neg-  
 lecting to in-  
 spect, &c.  
 [Mass. Stat.  
 Feb. 28, 1800,  
 § 6.]

SECT. 6. *Be it further enacted*, That no person shall  
 export from this State, by land or water, any cask, package  
 or quantity of nails, which shall not be inspected, marked  
 and branded as aforesaid ; as of the first or second or third  
 sort, upon the pain of forfeiting a sum equal to the value of  
 each cask, package or quantity so exported ; to be sued for  
 and recovered by action of debt, in any Court proper to try  
 the same ; one half to the use of the prosecutor, and the  
 other half to the use of such town, from whence they may  
 be exported : and the like penalty may be in like manner and  
 to like uses prosecuted for, against, and recovered of any  
 master of any vessel which shall receive on board for expor-  
 tation ; or any waggoner who shall export as aforesaid, any  
 such nails not inspected, marked and branded as aforesaid.

SECT. 7. *Be it further enacted*, That any package or  
 cask of wrought nails, manufactured in this State, or in any  
 other of the United States, which shall be brought into this  
 State for sale, and shall be put on board any vessel, waggon,  
 or carriage for transportation, or conveyance by land or  
 water, from this State, or shall be offered for sale in any  
 store, street or elsewhere, without being first inspected and  
 branded, agreeable to this act, shall be forfeited. And it  
 shall be lawful for any Justice of Peace, on information given  
 of any such nails not inspected and marked as aforesaid, to  
 issue his warrant, directed to the Sheriff or his deputy, or  
 Constable requiring them respectively, to make seizure of all  
 such nails, not marked, and to secure the same in order for  
 trial ; and such officers are hereby respectively empowered  
 and required to execute the same.

SECT. 8. *Be it further enacted*, That if the said inspec-  
 tor or any of his deputies, shall, on application made for the  
 inspection of any cask or casks of nails as aforesaid unrea-  
 sonably delay to make such inspection, he shall forfeit and



pay for each offence, the sum of four dollars, to be recovered and applied as the forfeiture herein before mentioned.

SECT. 9.\* *Be it further enacted,* That if any person shall counterfeit any brand used, or intended to be used for the purposes aforesaid, or shall brand, mark or impress any cask of nails with any such brand or counterfeit thereof; or put into any cask inspected and branded as aforesaid, any other nails than those contained therein, when the same shall have been so inspected, with intent to sell or export any such nails, so put in as aforesaid, he shall for each cask, into which nails, shall be so put, forfeit and pay the sum of twenty dollars to be recovered and applied as the foregoing forfeitures herein mentioned, are directed to be recovered and applied.

SECT. 10. *Be it further enacted,* That cut nails and brads of all sizes, shall be packed in good, strong and sufficient casks, made of seasoned timber, and well hooped; and shall not contain more than three hundred net pounds in a cask; the nails and brads to be well made, and packed, free from waste pieces of iron, (unless refuse nails or brads) or any fraudulent mixture increasing the weight: the manufacturer (who shall also be the owner of such nails or brads) shall brand the initial of his christian name, and his surname at large, on the side of each cask; also the name of the town where the manufacturer resides, in plain legible letters: and shall also mark the true and just weight of the tare of said cask with a brand or marking iron, under the name of the town.

SECT. 11. *Be it further enacted,* That if any cask, package or quantity of cut nails, or brads, not branded or marked as aforesaid, shall be offered for sale, or shall be put on board any vessel or carriage of transport, to be conveyed out of this State, the same shall be forfeited and liable to seizure; and the manufacturer and owner, as aforesaid, shall, for each and every pound of tare, more than is marked on the cask and for each and every pound of refuse, scraps or waste, which shall be mixed with said nails or brads, forfeit and pay one dollar for each and every pound of extra tare or waste.

SECT. 12. *Be it further enacted,* That if any person shall counterfeit any brand, used or intended to be used for the

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[\*672]  
Penalty for  
counterfeiting  
brand,

[1b § 8.]

or putting other  
nails into in-  
spected casks,  
with intent to  
sell or export.

Cut nails and  
brads how to  
be packed and  
branded.

[Mass. Stat.  
Mar. 4, 1803,  
§ 5.]

Nails or brads  
attempted to  
be sold or ex-  
ported, not be-  
ing inspected,  
may be seized,  
&c.

[1b. § 6.]  
Penalty on  
owner, &c.  
for fraud in  
packing, &c.

Penalty for  
counterfeiting



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brand, or altering marks, &c.  
[\*873]  
[Ib. § 7.]

purpose aforesaid ; or shall destroy or alter any mark or impression\* made by another person's brand on any cask of cut nails or brads, and cause a different impression by such counterfeit brand to be marked or impressed thereon ; or shall shift any cut nails or brads, from one branded cask to another, and thereby avail himself of another person's brand ; every person so offending shall forfeit the sum of twenty dollars.

Penalty on owner, master, &c. of any vessel, &c. for receiving nails on board, for exportation, if not branded, &c.

[Ib. § 8.]

SECT. 13. *Be it further enacted*, That if any master, mate, owner or other person shall receive on board any vessel or carriage of conveyance, any cask or other quantity of cut nails or brads, which are apparently intended to be transported out of this State, and are not branded and marked as provided and directed by this act ; he or they shall forfeit and pay a sum equal to the full amount of such nails.

Penalties, how recovered, &c.

[Ib. § 9.]

SECT. 14. *Be it further enacted*, That all penalties and forfeitures arising by force and virtue of the eleventh, twelfth and thirteenth sections of this act, shall be recovered and applied in the same way and manner as is provided for the recovery and application of penalties and forfeitures under the sixth section of this act.

Deputy inspectors to make return to inspector once in three months.

SECT. 15. *Be it further enacted*, That it shall be the duty of the several deputy inspectors aforesaid, once in three months, and oftener if required, to make returns to the inspector of the number of casks by them respectively inspected, together with the quantity of nails of each kind ; and the inspector of nails shall annually in the month of May, and oftener if required, make return of the number of casks, and weight of wrought and cut nails, specifying the different quantities of each by him and his deputies inspected, into the office of the Secretary of this State. And the inspector shall make up the returns before specified, to the first day of May of each year, and send in their returns to the Secretary's office, in the course of the same month.

Inspector annually in May to make return to Secretary of State, &c.

Present inspectors and deputies to remain in office.

SECT. 16. *Be it further enacted*, That the Inspector General and his deputies legally appointed and now in office, shall continue to hold and enjoy their respective offices, until others shall be appointed in their stead. [Approved February 28, 1821.]



## Chapter 158.\*

## CH. 158.

AN ACT for the admeasurement of Boards, and regulating the sale of Shingles, Clapboards, Hoops and Staves, and for other purposes.

[\*674]

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That there shall be one or more suitable persons elected in every town in this State, at their annual meeting in the month of March or April, to be surveyors and measurers of boards, plank, timber and slitwork, and surveyors of shingles, clapboards, staves and hoops, who shall be sworn to the faithful performance of the trust reposed in them, and in each maritime town in this State from whence staves or hoops are usually exported beyond sea, there shall be two or more suitable persons chosen by such towns, at their annual meeting in March or April, to be viewers and cullers of staves and hoops, who shall be under oath faithfully to discharge their office; and for their encouragement to accept this trust, they shall be allowed for their time and service as provided in the eleventh section of this act; and all boards, plank, timber or slitwork offered for sale, shall, previous thereto, be surveyed, and also measured, by one of the said surveyors, where he shall have any doubt of the measure, having due consideration for drying and shrinking, who shall also mark anew all such to the just contents thereof, making reasonable allowance [*for*] rots, knots and splits.

Towns to choose surveyors of boards, lumber, &c. in March or April;

[Mass. Stat. Jul 11, 1783, § 1y& 3.]

who shall be sworn. Maritime towns also to choose viewers and cullers of staves and hoops, to be sworn.

Boards, &c. to be surveyed and measured previous to sale.

SECT. 2. *Be it further enacted*, That no pine boards shall be shipped for exportation to foreign markets, but such as are square edged, and not less than seven eighths of an inch in thickness, and not less than ten feet in length on pain of being forfeited, to the use of the town where they shall be shipped: *Provided*, That a proper allowance shall be made for the drying and shrinking of pine boards, and that such as shall be three fourths of an inch thick after being fully seasoned, or in the same proportion as to thickness, being partly seasoned, shall be accounted merchantable, and may be sold here as such, or shipped or exported to any market.

Quality of boards allowed to be shipped for foreign market.

[Ib. § 2; and 1784, Mar. 16, § 5.]

Allowance to be made for drying and shrinking of pine boards.

SECT. 3. *Be it further enacted*, That no (a) shingles,

(a) 1. No action lies on a promissory note given for shingles not of the size prescribed by this statute. *Wheeler vs. Russell*, 17 Mass. 258.



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Dimensions of  
shingles, &c.  
[\*675]  
[Mass. Stat.  
July 11, 1783,  
§ 8 & 4.]

Size of bun-  
dles of shin-  
gles.

Shingles to be  
surveyed before  
sent from the  
town where  
made.

Forfeiture if  
not.

clapboards, staves or hoops shall be offered for sale in any town in this State,\* that shall be under the following dimensions, viz. all shingles shall be split crossways the grain, and be eighteen inches long, unless those made for home use; pine shingles shall be free from sap, and all shingles shall be free from shakes and worm holes, and shall be half an inch thick at the butt end, when green, and full three eighths of an inch, when thoroughly seasoned, if for exportation to a foreign market; and not less than one third of an inch thick at the butt, when fully seasoned, if for home use, and four inches wide on an average, and none less than three inches wide, and shall hold their width three fourths of the way to the thin end, and be well shaved; and each bundle shall contain two hundred and fifty shingles; or if bound in square bundles, shall contain twenty-five courses, and measure twenty-two inches and a half at the lay: and in case there shall be more than five shingles in any one bundle that are under the above length, breadth or thickness, or five short in the tale of any one bundle of two hundred and fifty, the bundle which is so deficient, or in which such shingles are contained, shall be forfeited, and the shingles in each bundle which are not merchantable, shall be burnt and the residue sold, and the money arising from the sale shall be paid into the hands of the town Treasurer for the benefit of the poor of such town where the shingles are condemned, first deducting therefrom the charge of culling and surveying. And before any shingles are sent from the town where they are made, or at the place of first sale, before their delivery, they shall be viewed, surveyed and measured by a sworn surveyor, and the town brand set upon the hoop of the bundle; and all shingles offered for sale without being surveyed und

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2. By ch. 250, § 1, vol. 3, p. 80, it is provided, "That notwithstanding the directions prescribed in the third section of the act aforesaid, relating to shingles intended to be shipped to a foreign market, it shall and may be lawful to offer for sale in any town in this State, shingles of other qualities, inferior in dimensions and quality to those mentioned in said act: And it shall be the duty of surveyors to inspect and mark such shingles of inferior qualities and less dimensions and to class them accordingly under the names of No. 2 and No. 3; and those described in the act aforesaid shall be considered as No. 1."



CH. 158.



marked as aforesaid, shall be forfeited and disposed of as before provided. And all white oak butt staves, shall be at least five feet in length, five inches wide, and one inch and a quarter thick on the heart, or thinnest edge, and every part thereof. And all white oak pipe staves, shall be at least four feet and eight inches in length, four inches broad in the narrowest part, and not less than three quarters of an inch thick on the heart or thinnest edge. And all white oak hogshead staves shall be at least forty-two inches long, and not less than half an inch thick on the heart or thinnest edge. And all white oak\* barrel staves, for a foreign market, shall be thirty-two inches long; and for home use shall be thirty inches long; and all shall be half an inch thick on the heart or thinnest edge. And all white oak hogshead and barrel staves shall be at least, one with another, four inches in breadth and none less than three inches in breadth in the narrowest part; and those of the breadth last mentioned shall be clear of sap. And all red oak hogshead and barrel staves, shall be of the same length, width and thickness with the white oak hogshead and barrel staves above mentioned: and all staves shall be well and proportionably split. And all pine clapboards that shall be exposed to sale, shall be made of good sound timber clear of sap, and all clapboards shall be free from shakes and worm holes, and of the following dimensions, viz. full five eighths of an inch on the back or thickest part, five inches wide, and four feet six inches long, and they shall be straight and well shaved or sawed. And all hogshead hoops that shall be exposed to sale, or exported, shall be from ten to thirteen feet in length, and shall be made of white oak or walnut, and of good and sufficient substance, well shaved; those made of oak shall be not less than one inch broad, at the least end, and those made of walnut shall be not less than three quarters of an inch broad at the least end; each bundle shall consist of thirty hoops; and all hoops of ten, twelve and thirteen feet respectively, shall be made up in distinct bundles by themselves; and if any hoops are packed of less dimensions than those prescribed by this law, or if any bundle shall contain less than thirty hoops, such bundle shall be

Dimensions of  
staves.

[\*676]

Dimensions of  
clapboards.Dimensions of  
hoops.



CH. 158. forfeited and sold for the benefit of the poor of the town where it is offered for sale (b).

Staves to be culled and hoops surveyed and shingles and clapboards certified before exportation.

[Ib. § 5.]

[\*677]

Penalty for violation, &c.

How recovered and distributed.

Certificate of survey, &c. to be delivered to collector, under oath, before vessel is cleared.

[Ib. § 6.]

SECT. 4. *Be it further enacted*, That all staves that shall be exported from this State beyond sea, shall be first culled, and all hoops first viewed and surveyed by one of the officers aforesaid, and a certificate given by the culler or surveyor, to the master or commander of the ship or vessel on board which they are laden, of the quantity by him so culled or surveyed; and the bands with which the bundles of hoops are bound, shall be sealed with the brand of the town from whence they are exported; and that all shingles and clapboards that shall be exported beyond sea shall likewise be\* certified by one of the surveyors already required by law to be chosen in each maritime town within this State, to have been by him surveyed, viewed and approved, and the number or quantity thereof; and any sellers of boards, staves, hoops, clapboards or shingles, that shall deliver any of the said articles before they are culled or surveyed, shall forfeit the sum of two dollars per thousand; and any person purchasing any of the articles before mentioned, and who shall receive them before they are culled or surveyed, shall forfeit and pay the sum of two dollars per thousand, one half to the informer who shall sue for the same, in any Court of this State proper to try the same, or before any magistrate within this State in case the forfeiture does not exceed seven dollars; the other half to the poor of the town where the offence is committed.

SECT. 5. *Be it further enacted*, That the master or owner of any vessel having any staves, hoops, boards, clapboards or shingles on board, for their cargo, and which shall be shipped for exportation to a foreign market shall, before such vessel shall be cleared at the custom house, produce to the collector a certificate of such staves, hoops, clapboards,

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(b) It is provided by ch. 404, § 2, vol. 3, p. 255, as follows:—

“That all hoops and staves shall be sold or exchanged as follows, viz: Twenty-five hoops shall constitute one bundle; four bundles, one hundred; ten hundred, one thousand; two staves shall constitute one cast; fifty casts, one hundred, and ten hundred, one thousand; and all other articles usually sold by tale, shall be sold by the decimel hundred, any law to the contrary notwithstanding.”



boards and shingles, having been culled or surveyed, and shall likewise make oath before the Collector (who is hereby empowered to administer the same) or before any Justice of the Peace who shall give a certificate of the said oath, which shall by the master or owner be transmitted to the Collector, that the boards, staves, hoops, clapboards, and shingles, on board his vessel, are bona fide the same boards, staves, hoops, clapboards and shingles, certified to have been culled or surveyed, and that he has no other on board, and that he will not take any others on board.

SECT. 6. *Be it further enacted*, That if any person shall presume to ship off any boards, staves, hoops, clapboards or shingles, unless the same shall first have been culled or surveyed, and marked by a sworn culler or surveyor as aforesaid, he shall forfeit and pay the sum of two dollars per thousand to be reckoned by feet or tale (c), according as the articles are usually sold, to be disposed of, one half to the poor of the town where the offence is committed, and the other half to the surveyor, or any other person or persons\* who shall sue for the same, which he or they are hereby enabled to do, by action, bill, plaint or information, in any Court proper to try the same, or before any Justice of the Peace if the forfeiture does not exceed seven dollars.

Penalty for shipping boards, staves, &c. before surveyed, &c.

[Ib. § 7.]

[\*678]

SECT. 7. *Be it further enacted*, That in addition to the penalty of two dollars per thousand, as mentioned in this act for the shipping of lumber otherwise than is herein prescribed, (to be reckoned by feet or tale according as the articles are usually sold) whenever it shall appear that any of the kinds of lumber mentioned in this act have been exported in any vessel whatever out of this State, to any port or place not within the same, unless the said lumber has been first culled or surveyed agreeable to this act; the master or owner of such vessel, shall, for the first offence, forfeit and pay the sum of two hundred dollars; and for the second offence the vessel so carrying the said lumber as aforesaid, being afterwards found in any part of this State, shall be forfeited, to be recovered and applied in like manner as is provided by

Additional penalty for owner or master of vessel violating this act.

[Mass. Stat. Mar. 16, 1784, § 2.]

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(c) See ante § 3, note b.



CH. 158. this act, for recovering and applying the penalty of two dollars per thousand as aforesaid (*d*).

This act to extend to exportation to another State, as well as to parts beyond sea.

[Ib. § 1.]

SECT. 8. *Be it further enacted*, That wherever the restriction upon the shipping of any kind of lumber is mentioned in any of the clauses of this act, to or for any foreign market, or beyond sea, the same shall be considered and understood to extend to any port or place not within this State, and that previous to any Collector's clearing out any vessel with lumber to any port or place not within this State, the like certificate of such staves, hoops, clapboards and shingles having been culled or surveyed, shall be produced, and the same oath administered, as is required to be produced and administered by this act for the exportation of lumber to a foreign market (*d*).

Penalty for surveyor, &c. refusing to be sworn.

[Mass. Stat. July 11, 1793, § 9.]

[\*679]

SECT. 9. *Be it further enacted*, That if any person or persons who shall be duly chosen to serve as a surveyor of boards, clapboards or shingles, or as a culler of staves or hoops, shall refuse or neglect to take the oath for the faithful discharge of the office, or to serve therein, every such person or persons shall pay the sum of three dollars, to the use of the poor of the town choosing such person or persons,\* and every such town shall proceed to the choice of other or others in the room of any person so refusing or neglecting, and so *toties quoties*.

Penalty for surveyor or culler, &c. acting fraudulently in discharge of his duty.

[Ib. § 8.]

SECT. 10. *Be it further enacted*, That in case any culler or surveyor, shall connive at, or allow of the breach of this act, or shall be guilty of any fraud or deceit in surveying or culling of boards, staves, hoops, clapboards, or shingles, he shall forfeit and pay the sum of thirty dollars for each offence; and in case of his refusal to attend the aforesaid service, when he shall be thereto requested, he shall forfeit and pay the sum of three dollars; the forfeitures and penalties in such cases to be recovered and disposed of as aforesaid.

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(*d*) It is provided by ch. 250, § 2, vol. 8, p. 81, as follows:—

“That the seventh and eighth sections of the act to which this is additional, be, and the same hereby are repealed so far as the provisions of the same relate to lumber exported or intended to be exported coastwise, unless the shipper or shippers shall prefer to have their lumber surveyed or inspected as provided in said act.”



SECT. 11. *Be it further enacted*, That the following fees shall be allowed to the officers aforesaid, viz. the buyer shall pay to the surveyor of boards, plank, timber and slit-work, eight cents per thousand feet for viewing only, and eight cents per thousand feet more for measuring and marking, and so in proportion for a lesser quantity. And the surveyor of shingles and clapboards shall be allowed by the buyer eight cents per thousand for surveying and telling, and the viewers and cullers of staves and hoops shall be allowed twenty-five cents per thousand for barrel staves, thirty-three cents per thousand for hogshead and butt staves, as well refuse as merchantable; the merchantable to be paid for by the buyer, the refuse by the seller, and the culler shall be allowed forty cents per thousand for hoops. [Approved March 16, 1821.]

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Fees allowed  
to surveyors,  
cullers, &c.

Additional Act, ch. 250, vol. 3. p, 80.

## Chapter 159.

AN ACT relating to Hogshead Shooks.

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, &c.

[Repealed; see ch. 414, vol. 3, p. 362.]

SECT. 1,\* provided for the size and quality of Hogshead Shooks.

[\*680]

SECT. 2, required all Shooks to be branded before sold, and prescribed a penalty for counterfeiting a brand.

SECT. 3,\* provided for the appointment of Inspectors of Shooks by Selectmen of towns to be sworn and to give bond, and a remedy for persons injured by inspectors. It also prescribed the duty of the inspectors.

[\*681]

SECT. 4, provided a penalty for altering or erasing a brand.

SECT. 5, prescribed the fees of inspectors, and mode of recovering penalties under the act.

[Approved March 20, 1821.]

## Chapter 160.

AN ACT to prevent fraud in Fire Wood, Bark or Coal, exposed to sale.

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That all cord wood

Dimensions of  
cord wood.



**CH. 160.** exposed to sale, shall be four feet long, including half of the scarf; and the cord being well and close laid together, shall measure eight feet in length, four feet in width, and four feet in height.

**[Mass. Stat. Mar. 7, 1797, § 1.]**

Selectmen to appoint measurers of wood and bark where towns vote it necessary.

**[Ib. § 2.]**

**[\*682]**

Measurers to be sworn.

Selectmen to appoint their fees.

Wood or bark if offered for sale before the same is measured and a ticket given, to be forfeited.

**[Ib. § 3.]**

Appropriation of penalty.

**SECT. 2.** *Be it further enacted,* That in each town in this State, where the inhabitants, shall in town meeting legally assembled, judge and vote the same to be necessary; and wherein fire wood or bark is usually sold, the Selectmen shall annually, or as occasion may require, appoint one or more suitable persons, and conveniently situated in the town, to be measurers of wood and bark there exposed or brought in for sale, and shall give public notice thereof; which measurer\* or measurers shall be sworn to the faithful and diligent discharge of their office; and shall receive such fees or allowance for their service as the Selectmen shall appoint, to be paid by the driver of the wood or bark, and repaid by the buyer, where brought in by land, and by the wharfinger where brought in by water, and the measurer shall be entitled to his action therefor accordingly (a).

**SECT. 3.** *Be it further enacted,* That if any fire wood or bark brought by land into any town for sale, wherein such measurers shall be so appointed, shall be offered for sale before the same shall be measured by such measurer, and a ticket signed by him and delivered to the driver, certifying the quantity of wood the load contains, the name of the driver and the town in which he resides, such wood or bark shall be forfeited; two thirds to the use of the poor of the town, where offered for sale, and the other third part thereof

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(a) By ch. 293, § 1, vol. 8, p. 181, it is provided, "That whenever any wood, bark or charcoal, may be sold by the cord, foot or load, in any town in this State, which may be stowed or loaded in such a manner, as to prevent surveyors of wood and bark from examining the middle of the load, and it shall appear on delivery of the same, that said wood, bark or charcoal, has been stowed with a view of obtaining payment for a greater quantity than there was, in fact, in said load, and with evident intent to defraud the purchaser, the person so selling said wood, bark or charcoal, or the owner thereof, shall forfeit and pay a sum not exceeding five dollars, for the use of the county, in which said penalty may have been incurred; together with costs of prosecution, to be recovered before any Justice of the Peace in said town."



to the measurer or any other person who shall prosecute for the same. Ch. 160.

SECT. 4. *Be it further enacted,* That all cord wood brought in by water into any town for sale, shall be measured by a measurer duly appointed and sworn as aforesaid; and in order thereto, the wood so brought in, shall be corded and piled by itself upon the wharf or land whereon the same shall be landed, in ranges, making up in height what shall be wanting in length; at which time it shall be so measured, and a ticket given to the purchaser, who shall be obliged to pay the stated fees or allowance for such service as appointed by the Selectmen.

Cord wood brought by water to be measured and a ticket given, after being piled on the wharf.

[Mass. Stat. June 22, 1799, § 1.]

SECT. 5. *Be it further enacted,* That if any wharfinger or carter shall cart or carry any fire wood from any wharf or landing place in any town (except for the use and consumption of such wharfinger or carter) before the same shall have been measured by some measurer appointed as aforesaid, he shall forfeit and pay one dollar for every load of wood so carried off; one moiety thereof to the use of the poor of the town, where the offence shall be committed, and the other moiety to any person who shall prosecute for the same.

No fire wood to be carried from the wharf before it is measured, except, &c.  
[Mass. Stat. Mar. 7, 1797, § 4.]  
Penalty and appropriation thereof.

SECT. 6. *Be it further enacted,* That every wharfinger, carter or driver, that shall cart or carry any fire wood from any\* wharf or landing place in any town, shall be furnished by the owner or seller of such wood, with a ticket, certifying the quantity the load contains and the name of the driver. And if any fire wood shall be carted or carried as aforesaid, without such ticket accompanying the same; or if any driver shall refuse to produce and shew such ticket, on demand, to any measurer, duly sworn as aforesaid, or his consent to have the same measured; or if such ticket shall certify a greater quantity of wood than the load contains, in the opinion of the measurer aforesaid, after measuring the same, such wood shall be forfeited and seized; two thirds to the use of the poor of the town, where offered for sale, and the other one third to the measurer or whoever shall prosecute for the same; to be recovered as the other forfeitures in this act are directed to be recovered: *Provided nevertheless,* That noth-

Persons carting wood from wharf to be furnished with a ticket.  
[\*683]  
[Mass. Stat. June 22, 1799, § 2.]

Ticket to be shewn to a wood measurer, on demand.

Wood to be forfeited if not truly certified.

Appropriation of forfeiture.

Proviso in favour of those



**CH. 160.** ing herein contained shall be construed to extend to any person or persons, who shall transport or cart or cause to be transported or carted from any wharf or landing place, to his or their own dwelling houses or stores, any cord wood which he or they shall have purchased on such wharf or landing place, or shall have landed thereon upon his or their own account.

who cart their own wood from the wharf or landing to their dwellings.

Dimensions of charcoal baskets.

[Mass. Stat. Mar. 7, 1797, § 5.]

To be sealed.

Penalty for measuring coal in baskets too small or unsealed.

Selectmen may appoint some person to seize such baskets.

[Ib. § 6.]

[\*684]

Forfeitures, how recovered.

**SECT. 7.** *Be it further enacted,* That all baskets (b) used in measuring charcoal brought into any town for sale, shall contain two bushels, and be of the following dimensions, to wit: nineteen inches in breadth in every part thereof, and seventeen inches and a half deep, measuring from the top of the basket to the highest part of the bottom; and that the basket be well heaped, and also be sealed by the sealer of the town where the person so using the same, shall usually inhabit or reside; and every person who shall measure the charcoal offered for sale in any basket of less dimensions, or not sealed as aforesaid, shall forfeit and pay for each offence, fifty cents, to the uses mentioned in the fifth section of this act; and such basket shall be destroyed.

**SECT. 8.** *Be it further enacted,* That the Selectmen of any town, where coal is usually sold, shall have power to appoint, as occasion may require, some suitable person to seize and secure all baskets improved for measuring coal, that shall not be of the dimensions aforesaid, and sealed as aforesaid,\* and to prosecute such person or persons as shall be guilty of a breach of this act.

**SECT. 9.** *Be it further enacted,* That all the forfeitures aforesaid, may be recovered, with costs of suit, by action of debt before any Court proper to try the same. [Approved March 8, 1821.]

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(b) By ch. 298, § 2, vol. 3, p. 131, it is provided, "That any charcoal brought into any town for sale, may be measured and sold by the cord or foot, estimating the cord at ninety-six bushels, whenever the purchaser and seller may mutually agree to the same, and the measurers of wood and bark in any town shall be measurers of charcoal in the same; any law to the contrary notwithstanding."



## Chapter 161.

## CH. 161.

AN ACT to prevent the exportation of unmanufactured Calf Skins, and to encourage the manufacture of Leather Boots and Shoes.

SECT. 1. *BE it enacted by the Senate and House of Representatives in Legislature assembled,* That no unmanufactured calf skins shall be exported from this State by land or water ; and if the owner or owners of any green or unmanufactured calf skins, or other person or persons employed by him or them, shall lade, or put on board of any vessel or float, bound out of this State, any green or unmanufactured calf skins ; or if any master of any ship or vessel, or other officer or mariner shall receive on board any unmanufactured calf skins as aforesaid, the person or persons so offending, shall incur the penalty of two dollars for each and every unmanufactured calf skin, so shipped or attempted to be shipped ; to be sued for, and recovered in any Court within this State proper to try the same, to any person who will prosecute therefor.

Calf skins unmanufactured, not to be exported,

[Mass. Stat. Mar. 31, 1788.]

under penalty of, &c.

SECT. 2. *Be it further enacted,* That each manufacturer of leather, or of boots, half boots, shoes, pumps, sandals, slippers, or golo shoes, shall have the exclusive right of stamping said articles, by him or her manufactured, with the initial letter of his or her christian name, and his or her surname at large ; and such stamping shall be considered as a warranty, that the article stamped, is merchantable, being made of good materials and well manufactured.

Leather boots, shoes, &c. may be stamped by the maker, which shall be a warranty of the goodness of such articles.

[Mass. Stat. Feb. 27, 1800, § 1.]

SECT. 3. *Be it further enacted,* That any person who shall fraudulently stamp, or aid and abet in fraudulently stamping, either of the articles aforesaid, with the name or stamp of any other person, on due conviction thereof, shall be punished as guilty of a fraud, either by fine not exceeding\* twenty dollars, or by imprisonment, not exceeding six months, or by both these punishments, at the discretion of the Court having cognizance thereof. [Approved February 19, 1821.]

Penalty for counterfeiting the stamp.

[Ib. § 3]

[\*685]



AN ACT to provide for the proof of Fire Arms.

Governor to  
appoint prov-  
ers of gun bar-  
rels.

[Mass. Stat.  
Mar. 8, 1808,  
§ 1.]

Barrels to be  
marked and  
certificate giv-  
en.

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That the Governor, by and with the consent of the Council, be, and he hereby is empowered to appoint suitable persons, to be provers of the barrels of all new, or unused fire arms; and it shall be the duty of each person so appointed, to prove and try the strength of the barrels of all fire arms which shall be offered him for that purpose, in such manner as to satisfy himself of the strength of the same; and shall in a permanent manner, mark and number every barrel by him so proved, and make, and deliver to the person applying to have the same proved, a certificate for each barrel proved, and found good in the form following:

I certify that on this —— day of —— A. D. 18—— I proved for ——, a musket, pistol, or rifle barrel, (as the case may be) and which is numbered and marked as in the margin, and that the same is good and strong.

A. B. Prover of fire arms.

Prover's fees.  
[Ib. § 1.]

SECT. 2. *Be it further enacted*, That each prover shall be entitled to receive from the person applying to have such barrel proved, twenty-five cents, in addition to the expense of the powder necessary for that purpose for each barrel so proved; whether the same shall stand the proof and be marked or not.

Penalty for sel-  
ing guns or  
pistols, not  
proved and  
marked.  
[Ib. § 3.]

SECT. 3. *Be it further enacted*, That if any person shall sell or offer for sale within this State, any new, or unused musket, rifle, or pistol barrel, without having the same first proved, marked, and certified according to the provisions of this act, he shall forfeit for each barrel so sold, the sum of ten dollars, to be recovered by an action of debt before any Court proper to try the same; to the use of any person\* who shall sue for and recover the same, or by indictment to the use of the State.

[\*686]  
How recover-  
ed.

Penalty for al-  
tering marks or  
certificates.  
[Ib. § 4.]

SECT. 4. *Be it further enacted*, That if any person shall falsely alter the stamp or mark or the certificate of any prover of fire arms, appointed as aforesaid, and be convicted thereof before any Court proper to try the same, he shall forfeit and



pay a fine of not more than one hundred dollars, nor less than twenty dollars according to the nature and aggravation of the offence, for the use of the State. [Approved March 10, 1821.]

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## Chapter 163.

AN ACT regulating the packing and selling of Paper within this State.

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That all paper, excepting paper of foreign manufacture, press paper, bonnet paper and such paper as is usually sold by weight, which shall be made or offered for sale within this State, shall be packed in reams, each ream containing twenty quires, and each quire twenty-four sheets; and on the centre of the face of each ream, shall be pasted a piece of substantial white paper, at least four inches square, having the name or names of the manufacturer or manufacturers, and his or their place of residence, and also the words "ONE REAM," legibly stamped thereon: *Provided however*, That printing paper may be packed in parcels of two reams each, and on the centre of the face of each parcel so packed, shall be pasted a piece of substantial white paper, at least four inches square having the name or names of the manufacturer or manufacturers, and his or their places of residence, and also the words "TWO REAMS," legibly stamped thereupon.

Paper made or offered for sale to be packed in reams, &c.

[Mass. Stat. Feb. 23, 1818, § 1.]

bearing name of maker, place of abode, &c.

Proviso as to printing paper.

SECT. 2. *Be it further enacted*, That any and every person so making or offering for sale, or selling paper except as aforesaid, not packed and stamped as aforesaid, or who shall transport, or cause to be transported out of this State, or shall put on board any vessel, or other carriage of conveyance, with intention to transport the same out of this State, any paper except as aforesaid, not packed and stamped as aforesaid,\* shall, for each offence, forfeit and pay the sum of four dollars for each ream, package or parcel so offered for sale, or sold, or which shall be transported out of this State, or which shall be put on board of any vessel or other car-

Penalty for selling or disposing in any way of paper not so packed and marked.

[Ib. § 2.]

[\*687]



**CH. 164.** riage of conveyance, with intention to transport the same out of this State.

Penalties, how recovered and appropriated.

[Ib. § 3.]

**SECT. 3.** *Be it further enacted,* That the penalties in this act shall be recovered in an action of debt, in any Court having jurisdiction to try the same ; one moiety thereof to the use of the county in which such offence shall be committed, the other moiety thereof to the use of the person suing for the same ; and all such paper not packed or not stamped as aforesaid, shall also at all times be liable to be seized to the use of any person, who may seize the same, provided the person, so seizing, shall, within seven days after the seizure, commence his action as aforesaid, and shall prosecute the same to the recovery of the penalty aforesaid. [Approved February 19, 1821.]

**Chapter 164.**

AN ACT to organize, govern, and discipline the Militia of this State (a).

*Laws of the United States, relating to the Militia, now in force.*

Preamble.  
United States militia law, May 8, 1792.

**WHEREAS**, Congress on the eighth day of May, in the year of our Lord one thousand seven hundred and ninety-two, passed the following law, entitled “ An Act more effectually to provide for the national defence, by establishing an uniform Militia throughout the United States.”

Persons to be enrolled.

**SECT. 1.** **BE** it enacted by the Senate and House of Representatives, of the United States of America in Congress assembled, That each and every free, able bodied (b), white male citizen of the respective States, resident therein, who is or shall be of the age of eighteen (c) years, and under the age

(a) In an action for a penalty under this statute, the declaration must allege the offence to have been committed “ against the form of the statute in that case made and provided.” *Heald vs. Weston*, 2 Glf. 848.

(b) Every citizen not within the class of persons specially exempted from military duty, is presumed to be able bodied and liable to enrolment, until he show the contrary. *Howe vs. Vance*, 7 Glf. 158.

(c) One who is by law liable to do military duty, may enlist in an independent company, although under the age of 21 years, and such enlistment will take him out of the standing company of militia, in which he would otherwise be liable to do duty. *Com. vs. Frost*, 13 Mass. 491.



CH. 164.

of forty-five years, (except as is herein after excepted) shall severally and respectively be enrolled in the Militia, by the Captain or commanding officer of the company, within whose bounds such citizen shall reside, and that within twelve months after the passing of this act. And it shall at all times hereafter be the duty of every such Captain or commanding officer of a company, to enrol every such citizen as aforesaid, and also those who shall, from time to time, arrive at the age of eighteen years, or\* being of the age of eighteen years, and under the age of forty-five years, (except as before excepted,) shall come to reside within his bounds (*d*), and shall without delay notify such citizen of the said enrolment, by a proper non-commissioned officer of the company, by whom such notice may be proved. That every citizen so enrolled and notified, shall within six (*e*) months thereafter, provide himself with a good musket or firelock, a sufficient bayonet and belt, two spare flints, and a knapsack, a pouch, with a box therein to contain not less than twenty-four cartridges (*f*), suited to the bore of his musket or firelock, each cartridge to contain a proper quantity of powder and ball; or with a good rifle, knapsack, shot pouch, and powder horn, twenty balls, suited to the bore of his rifle, and a quarter of a pound of powder; and shall appear so armed, accoutred and provided, when called out to exercise, or into service, except that when called out on company days, to exercise only, he may appear without a knapsack. That the commissioned officers shall severally be armed with a sword or hanger, and esponton; and that from and after five years from the passing of this act, all muskets for arming the militia, as herein required, shall be of bores sufficient for balls of the eighteenth part of a pound. And every citizen so enrolled, and providing himself with the arms, ammunition, and accoutrements required as

Duty of captains, &c. as to enrolling.

[\*689]

Notice of enrolment.

Arms and equipments.


Arms, &c. exempted from attachment.

(*d*) See notes to § 3, and 12.

(*e*) See onward § 15, and note thereto.

(*f*) It is provided by ch. 416, § 1, vol. 3, p. 268, "That so much of the several acts now in force to organize, govern and discipline the militia as requires the exhibition of cartridges of powder and balls, or of powder and balls not in cartridges, by non-commissioned officers and privates, at the annual inspection, be and the same hereby is repealed." See ch. 819, vol. 3, § 12.



CH. 164.  aforesaid, shall hold the same exempt from all suits, distresses, execution of sales for debt, or for the payment of taxes.

Exempts.

SECT. 2. *And be it further enacted*, That the Vice President of the United States, the officers, Judicial and Executive of the Government of the United States, the members of both Houses of Congress, and their respective officers; all Custom House Officers, with their Clerks; all Post Officers (g) and Stage Drivers, who are employed in the care and conveyance of the Mail of the Post Office of the United States; all Ferry-men, employed at any ferry, on the post road; all Inspectors of Exports; all Pilots; all Mariners (h), actually employed in the sea service of any citizen or merchant, within the United States; and all persons who now are, or may hereafter be exempted by the laws of the respective States, shall be and are hereby exempted from military duty, notwithstanding their being above the age of eighteen, and under the age of forty-five years.

[\*689]

Arrangement  
of the militia.

SECT. 3.\* *And be it further enacted*, That within one (i) year after the passing of this act, the Militia of the respective States shall be arranged into Divisions, Brigades, Regiments, Battalions and Companies, as the Legislature of each State shall direct (j); and each division, brigade, and regiment, shall be numbered at the formation thereof; and a record

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(g) An assistant postmaster is not exempt from militia duty. *Slater vs. Bates*, 10 Pick. 153.

(h) Fishermen engaged in the cod fishery on board a vessel of more than twenty tons, duly licensed, and having signed an agreement required by the laws of the United States, are not liable to do duty in the militia. *Com. vs. Douglass*, 17 Mass. 49. It is the same, though they may not have signed any shipping paper. *Bayley vs. Merritt*, 2 Pick. 597; *Pratt vs. Hall*, 4 Mass. 241.

(i) This provision must either be considered as directory after that period; or the legislature of the State is left to provide alterations at its own discretion. *Com. vs. Thaxter*, 11 Mass. 392.

(j) 1. Under this provision, and under the provisions of § 6 of the laws of this State, the commander in chief with advice of Council, is authorized and empowered to organize and arrange the militia of the State, conformably to the laws of the United States, and to make such alterations therein as from time to time may be deemed necessary; and these provisions are not unconstitutional as being a delegation of legislative authority. *Adam's Pet.* 4 Pick. 25.



made of such numbers, in the Adjutant General's office, in the State; and when in the field, or in service in the State, each division, brigade and regiment, shall respectively take rank according to their numbers, reckoning the first or lowest number, highest in rank. That if the same be convenient, each brigade shall consist of four regiments, each regiment of two battalions, each battalion of five companies, each company of sixty-four privates. That the said Militia shall be officered by the respective States, as follows: To each division, one Major General, and two Aids-de-Camp, with the rank of Major; to each brigade, one Brigadier General, with one Brigade Inspector, to serve also as Brigade Major, with the rank of a Major; to each regiment, one Lieutenant Colonel, Commandant; and to each battalion, one Major; to each company, one Captain, one Lieutenant, one Ensign, four Sergeants, four Corporals, one Drummer and Fifer, or Bugler. That there shall be a Regimental Staff, to consist of one Adjutant, and one Quarter Master, to rank as Lieutenants; one Pay Master, one Surgeon, and one Surgeon's mate; one Sergeant Major, one Drum Major, and one Fife Major.

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How officered.

[See laws of Congress, April 20, 1816, Sec. 1, altering this section.]

SECT. 4. *And be it further enacted*, That out of the Militia enrolled as is herein directed, there shall be formed for each battalion at least one company of grenadiers, light infantry or riflemen; and that to each division there shall be at least one company of artillery, and one troop of horse; there shall be to each company of artillery, one Captain, two Lieutenants, four Sergeants, four Corporals, six Gunners, six Bombardiers, one Drummer and one Fifer. The officers to be armed with a sword or hanger, a fusee, bayonet and belt, with a cartridge box to contain twelve cartridges; and each private or matross shall furnish himself with all the equipments of a private in the infantry, until proper ordnance and field artillery is provided. There shall be to each troop\* of horse, one Captain, two Lieutenants, one Cornet, four Sergeants, four Corporals, one Saddler, one Farrier, and one

Grenadiers, light infantry and riflemen.

Officers of artillery, and

[\*690]

cavalry.

2. The commander in chief, with advice of Council, has authority to annex one town or part of a town to another, in order to form the territorial limits of a company. *It.*



**CH. 164. Trumpeter.** The commissioned officers to furnish themselves with good horses, of at least fourteen hands and a half high, and to be armed with a sword and a pair of pistols, the holsters of which to be covered with bear skin caps. Each dragoon to furnish himself with a serviceable horse, at least fourteen hands and a half high, a good saddle, bridle, mail-pillion and valise, holsters, and a breast plate and crupper, a pair of boots and spurs, a pair of pistols, a sabre and cartridgebox, to contain twelve cartridges for pistols. That each company of artillery, and troop of horse, shall be formed of volunteers from the brigade (*k*), at the discretion of the Commander in Chief of the State, not exceeding one company of each to a regiment, nor more in number than one eleventh part of the infantry, and shall be uniformly clothed in regimentals, to be furnished at their own expense; the color and fashion to be determined by the Brigadier commanding the brigade to which they belong.

How to be furnished with horses, &c.

Artillery and cavalry how raised.

Uniform.

Colours, drums, bugles, &c. how furnished.

**SECT. 5.** *And be it further enacted,* That each battalion and regiment shall be provided with the State and regimental colours, by the field officers, and each company with a drum and fife, or bugle horn, by the commissioned officers of the company, in such manner as the Legislature of the respective States shall direct.

Adjutant general:

his duty.

**SECT. 6.** *And be it further enacted,* That there shall be an Adjutant General (*l*) appointed in each State, whose duty it shall be to distribute orders from the Commander in Chief of the State to the several corps; to attend all public reviews, when the Commander in Chief of the State shall review the Militia, or any part thereof; to obey all orders from him relative to carrying into execution and perfecting the system of military discipline, established by this act, to furnish blank forms (*m*) of different returns that may be re-

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(*k*) A person subject to militia duty, living within the limits of one brigade, cannot lawfully enlist in a volunteer company in another brigade. *Webber, petitioner*, 3 Pick. 264.

(*l*) He is required to keep an office at the seat of government, by ch. 212, vol. 3, p. 42.

(*m*) The forms of militia returns, prescribed and furnished by the Adjutant General under the provisions of § 6, are of the same binding force as if they were contained in this statute in detail. *Sawtel vs. Davis*, 5 Glf. 438.



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quired, and to explain the principles on which they should be made; to receive from the several officers of the different corps throughout the State, returns of the Militia under their command, reporting the annual situation of their arms, accoutrements and ammunition, their delinquencies, and every other thing that\* relates to the general advancement of good order and discipline: all which the several officers of the divisions, brigades, regiments and battalions, are hereby required to make, in the usual manner, so that the said Adjutant General may be duly furnished therewith; from all which returns he shall make proper abstracts, and lay the same annually before the Commander in Chief of the State.

[\*691]

Returns to be made to adjutant general.

SECT. 7. *And be it further enacted*, That all commissioned officers shall take rank according to the date of their commissions; and when two of the same grade bear an equal date, then their rank to be determined by lot, to be drawn by them before the commanding officer of the brigade, regiment, battalion, company or detachment.

Rank of officers.

SECT. 8. *And be it further enacted*, That if any person, whether officer or soldier, belonging to the Militia of any State, and called into the service of the United States, be wounded or disabled while in actual service, he shall be taken care of, and provided for, at the public expense.

Disabled officers and soldiers.

SECT. 9. *And be it further enacted*, That it shall be the duty of the Brigade Inspector, to attend the regimental and battalion meetings of the Militia composing their several brigades, during the time of their being under arms, to inspect their arms, ammunition and accoutrements; superintend their exercises and manœuvres, and introduce the system of military discipline before described, throughout the brigade, agreeably to law, and such orders as they shall, from time to time, receive from the Commander in Chief of the State; to make returns to the Adjutant General of the State, at least once in every year, of the Militia of the brigade to which he belongs, reporting therein the actual situation of the arms, accoutrements and ammunition, of the several corps, and every other thing which, in his judgment, may relate to the government and the general advancement of good order and military discipline; and the Adjutant General

Brigade inspector's duty

Adjutant general to make returns to Gov-



**CH. 164.** shall make a return of all the Militia of the State to the Commander in Chief of the said State, and a duplicate of the same to the President of the United States. And whereas sundry corps of artillery, cavalry and infantry, now exist in several of the said States, which, by the laws,\* customs or usages thereof, have not been incorporated with, or subject to, the general regulations of the Militia :

Privileges to certain corps confirmed.

**SECT. 10.** *And be it further enacted,* That such corps retain their accustomed privileges, subject nevertheless to all other duties required by this act, in like manner with the other Militia.

Additional act of Congress, March 2, 1803.

And, whereas, Congress, on the second day of March, in the year of our Lord one thousand eight hundred and three, passed the following additional law, entitled,

“AN ACT in addition to an Act entitled an Act more effectually to provide for the national defence, by establishing an uniform Militia throughout the United States.”

Adjutant general to make annual returns to President of U. States.

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That it shall be the duty of the Adjutant General of the Militia in each State, to make return of the Militia in each to which he belongs, with their arms, accoutrements and ammunition, agreeably to the directions of the act, to which this is in addition, to the President of the United States annually, on or before the first Monday in January in each year ; and it shall be the duty of the Secretary of War, from time to time, to give such directions to the Adjutant Generals of the Militia, as shall in his opinion be necessary to produce an uniformity in the said returns, and he shall lay an abstract of the same before Congress on or before the first Monday of February annually.

Duty of persons enrolled.

**SECT. 2.** *And be it further enacted,* That every citizen duly enrolled in the Militia, shall be constantly (n) provided with arms, accoutrements and ammunition, agreeably to the direction of the said act, from and after he shall be duly notified of his enrolment ; and any notice or warning to the citizens so enrolled to attend a company, battalion or regimental muster or training, which shall be according to the laws of the State in which it is given for that purpose, shall be deemed a legal notice of his enrolment.

Legal notice of enrolment.

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(n) See onward, § 15, and note thereto.



SECT. 3. *And be it further enacted,* That in addition to the officers provided by the said act, there shall be to the Militia of each State, one Quarter Master General ; to each brigade one Quarter Master of Brigade ; and to each regiment, one Chaplain. CH. 164.

Quartermaster general, Brigade quartermaster, and chaplain to regiment.

And\* whereas, Congress, on the 18th day of April, in the year of our Lord one thousand eight hundred and fourteen, passed the following laws, entitled an Act in further addition to an Act, entitled.

[\*693]  
Additional law of U. States, April 18, 1814.

“ AN ACT more effectually to provide for the national defence, by establishing an uniform Militia through the United States.”

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That in addition to the officers of Militia provided for by the act entitled an act more effectually to provide for the national defence, by establishing an uniform Militia throughout the United States, approved May the eighth, one thousand seven hundred and ninety-two, and by an act in addition to said recited act, approved March the second, one thousand eight hundred and three, there shall be to each division, one Division Inspector, with the rank of Lieutenant Colonel, and one Division Quarter Master, with the rank of Major ; to each brigade one Aid-de-Camp, with the rank of Captain, and the Quarter Masters of Brigades heretofore provided for by law, shall have the rank of Captain.

Division inspector, division quartermaster, brigade aid-de-camp ;

And it shall be incumbent on the said officers to do and perform all the duties which by law and military principles are attached to their offices respectively. their duties.

And whereas Congress on the twentieth day of April in the year of our Lord one thousand eight hundred and sixteen, passed the following law, entitled,

“ AN ACT concerning the Field Officers of the Militia.”

Act of Congress, April 20, 1816.

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That from and after the first day of May next, instead of one Lieutenant Colonel Commandant to each regiment, and one Major to each battalion of the Militia, as is provided by the act, entitled “ An Act more effectually to provide for the national defence, by establishing an uniform Militia throughout the United States, approved May the eighth, one thousand seven hundred and ninety-two, there shall be one Colonel, one Lieutenant Colonel, and one Major to each regiment of the

One colonel, lieutenant colonel, and major to each regiment



CH. 164. Militia, consisting of two battalions; where there shall be only one battalion, it shall be commanded by a Major: *Provided*, That nothing contained herein shall be construed to\* annul any commission in the Militia which may be in force as granted by the authority of any State or Territory, in pursuance of the act herein recited, and bearing date prior to the said first day of May next."

Act of Congress, May 12, 1820.

And whereas, Congress on the twelfth day of May, in the year of our Lord one thousand eight hundred and twenty, passed the following additional law, entitled,

"AN ACT to establish an uniform mode of discipline and field exercise for the Militia of the United States."

Discipline, system of, established.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the system of discipline and field exercise which is and shall be ordered to be observed by the regular army of the United States in the different corps of infantry, artillery and riflemen, shall also be observed by the Militia in the exercises and discipline of the said corps respectively throughout the United States.

Repeal of part of act of Congress of May 8, 1792.

SECT. 2. *And be it further enacted*, That so much of the act of Congress approved the eighth day of May one thousand seven hundred and ninety-two, as approves and establishes the rules and discipline of the Baron de Steuben, and requires them to be observed by the Militia throughout the United States, be, and the same is hereby repealed.

#### MILITIA LAW.

Militia law of the State.

[Mass. Stat. Mar. 6, 1810, § 1.]

Exempts, absolute.

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That in addition to the exemptions made by the foregoing laws of the United States, the Justices of the Supreme Judicial Court; all regularly ordained Ministers of the Gospel, of every denomination, while they shall ordinarily officiate as such, and continue in regular standing; all officers, who have heretofore held, or may hereafter hold commissions in the Militia of this State for the term of five years, or shall have been superseded, or whose corps or company shall have been disbanded, and who have been honorably discharged; and every person of the religious denominations of Quakers and Sha-



CH. 164.  
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 [\*695]

kers who shall on or before (o) the first Monday of April annually,\* produce a certificate (p) to the commanding officer of the company within whose bounds such Quaker or Shaker resides; which certificate, signed by two or more of the elders or overseers, (as the case may be) and countersigned by the Clerk of the society with which such Quaker or Shaker meets for religious worship, shall be in substance as follows :

“ We, the subscribers, of the Society of the people called — in the town of — in the county of — do hereby certify (q) that — is a member of our Society, and that he frequently and usually attends with said Society, for religious worship, and conforms to the usages of the same, and we believe is conscientiously scrupulous of bearing arms.

E. F. Clerk.

A. B. } *Elders or Overseers,”*

C. B. } [as the case may be.]

Notwithstanding their being above the age of eighteen and under the age of forty-five years, be, and they are hereby exempted from the performance of military duty; but no other able bodied white male citizen between those ages shall be exempted from military duty except such as are hereinafter excepted.

SECT. 2. *Be it further enacted*, That each of the persons, hereinafter mentioned, may be exempted from the performance of military duty, notwithstanding their being of the age of eighteen years and under the age of forty-five years, viz : All officers, who have held or may hereafter hold commissions in the army (r) or Navy of the United States, or in the

Exempts conditional.

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(o) One claiming exemption under this provision, will not be exempted by producing his certificate *after* the day specified in the statute. *Lees vs. Childs*, 17 Mass. 351. See note u, § 2.

(p) 1. If the overseers of a society of friends or quakers, in a certificate granted to one of their members, state that he “ reasonably ” conforms to the usages of the society, the certificate is good, notwithstanding the qualification. *Dole vs. Allen*, 4 Glf. 527.

2. The certificate is conclusive evidence of the facts it contains. *Id.*

3. The averment, of the persons certifying, that they believed the party to be conscientiously scrupulous of bearing arms, is a part of the certificate not to be dispensed with. *Lees vs. Childs*, 17 Mass. 351.

(q) *Com. vs. Fletcher*, 12 Mass. 442.

(r) 1. Such an one, claiming exemption, must produce his commission, or show actual service by virtue of a lawful appointment. *Com. vs. Smith*, 13 Mass. 316.



**CH. 164.** Militia of any of the United States; and all officers, who have held or may hereafter hold commissions in the Militia of this State for a term less than five years, and have been discharged otherwise than in pursuance of any sentence of a Court Martial; and all Staff-officers, who shall have ceased to act as such, in consequence of the resignation, promotion (s) or removal of the officers, who appointed them; and such Engine (t) men between thirty and forty-five years of age as shall annually produce to the commanding officer of the company within whose bounds they reside, certificates from the Selectmen of their respective towns, that they have been legally appointed and are bound to perform the duties of Engine men, and that there are not more than\* ten appointed to any one engine: *Provided*, That each person so exempted shall pay to the Treasurer of the town or plantation, within which such exempt resides, two dollars annually, and produce his receipt therefor to the commanding officer of the company within the bounds of which he resides, on or before (u) the first Monday of April in each year: *Pro-*

[\*696]

Proviso for payment of two dollars annually.

Conditional exempts may be called forth in certain cases.

2. It is provided by ch. 240, § 1, vol. 3, p. 70, as follows:—

“That in addition to the exempts, allowed by the act, to which this is additional, all officers who have held, or may hereafter hold commissions in the militia of any of the United States, for the term of five years, and have been honourably discharged, shall be and they hereby are exempted from military duty.”

(s) See *exparte*, *Hall*, 1 *Pick.* 261.

(t) 1. The exemption of engine men applies as well to members of volunteer or independent companies, as to those of the standing militia. But the right to such exemption is waived, if it exist at the time the party enlists into such volunteer company. *Com. vs. Smith*, 14 *Mass.* 374. In *Hamilton vs. Shepherd*, 3 *Pick.* 226, it was held, that “The appointment of a member of a volunteer company in the militia to be an engine man, exempts him from militia duty, but does not discharge him from his enlistment, and if he ceases to be an engine man before the expiration of the term of the enlistment, his liability to do duty in such company revives. And this liability will not be affected by his enlisting, while so exempted, in another volunteer company and receiving a non-commissioned officer’s warrant therein.”

2. By ch. 240, vol 3, p. 70, so much of this chapter as relates to engine men, is repealed. See ch. 132, ante p. 692. They are further conditionally exempted, by ch. 506, vol. 3, p. 355.

(u) So it is not sufficient to produce such certificate after the training. *Com. vs. Smith*, 14 *Mass.* 374. See note o, above.



*vided also*, Nothing contained in this section shall be construed to prevent the conditional exempts, therein named, from being called forth to execute the laws of the United States, or of this State, to suppress insurrection and repel invasion (*v*).

CH. 164.

Conditional  
exempts may  
be called forth  
in certain cas-  
es.

SECT. 3. *Be it further enacted*, That all persons liable by law to the performance of military duty, who are or may be between the ages of forty (*w*) and forty-five years, be, and they hereby are exempted from all military duty, except that of being detached or called forth to execute the laws of the United States, or of this State, to suppress insurrections and repel invasions, and of keeping themselves constantly furnished with the arms and equipments required by the laws of the United States, and the duty of carrying or sending (*x*) them on the first Tuesday of May annually, to the place of inspection or view of arms of the company within the bounds of which they may reside, and in which they may be enrolled; and the duty of attending the election of company officers.

Exempts par-  
tial, between  
40 and 45,  
years of age.

SECT. 4. *Be it further enacted*, That the said Treasurers shall severally keep a fair account of all monies by them received by virtue of this act, subject at all times to the in-

Treasurers of  
towns to keep  
account of mo-  
nies received  
of conditional

(*v*) The legislature has power to revoke an exemption from serving in the militia, before granted to a certain class of citizens, and to require them to do military duty. *Com. vs. Bird*, 12 Mass. 443.

(*w*) It is provided by act passed March 9, 1832, ch. 45, § 11, as follows:—

“That the exemption allowed to persons between the ages of forty and forty-five years by the third section of an act entitled an act to organize, govern and discipline the Militia of this State, passed the twenty-first day of March one thousand eight hundred and twenty-one, be and hereby are extended to all persons between the ages of thirty-five and forty-five years, they being held subject to all the duties and restrictions, in said section specified.”

(*x*) It is provided by ch. 283, § 2, vol. 3, p. 124, as follows:—

“That every non-commissioned officer or private, who by the act to which this is additional, is permitted to send his arms and equipments for inspection on the first Tuesday of May shall neglect so to do, or shall on said day lend or sell them so that they may be inspected as the property of another, shall forfeit two dollars and fifty cents, to be sued for and appropriated according to the provisions of this act and the act to which this is additional.”



## CH. 164.

exempts and  
pay over to  
State treasu-  
rer.

Students of  
colleges &c. to  
be enrolled in  
the towns  
where their  
residence is by  
law establish-  
ed.

[\*697]

Governor and  
council to ar-  
range and or-  
ganize the mi-  
litia,

[Mass. Stat.  
Mar. 6, 1810,  
§ 2.]

and companies  
at large.

spection of any of the commanding officers of the company or companies in the towns, or plantations, to which they belong; and shall annually, on or before the second Wednesday of January, transmit to the Treasurer of the State, a fair account of all monies so by them received; and shall within thirty days thereafter pay the amount thereof into the treasury of this State, and the same shall there constitute a fund to be appropriated and disposed of as the Legislature shall, from time to time direct, for the sole purpose of arming, equipping and uniforming the militia.

SECT. 5. *Be it further enacted*, That all students of any College, Theological Seminary, or Academy, shall be enrolled and held to do duty only in the towns and plantations,\* wherein their residence is established according to law.

SECT. 6. *Be it further enacted*, That the Governor be, and he hereby is authorized and empowered, by and with the advice of the Council, to organize and arrange the militia of this State, conformably to the laws of the United States, and to make such alterations therein, as from time to time, may be deemed necessary (y). And that all applications or petitions for raising companies at large, and for alterations in the arrangement of the militia, shall be made to the Governor, and he by and with the advice and consent of the Council, is hereby authorized to grant such petitions or applications as to him may appear proper: *Provided*, The present organization and arrangement of the militia shall continue until the Governor, with advice of the Council, shall otherwise order (z).

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(y) 1. See note j, § 3, ante p. 606.

2. "Where a regiment of militia, to which a volunteer company of light infantry was attached, was by order of the governor and council formed into two regiments, it was holden that such company was attached to the regiment comprehending the towns to which most of the members of the company belonged." *Com. vs. Thaxter*, 11 Mass. 386. See *Com. vs. Allen*, 16 Mass. 523.

(z) 1. It is provided by ch. 319, § 10, vol. 3, p. 166, as follows:—

"That the Governor, with advise and consent of Council, be, and he hereby is, authorized to ~~organize~~ independent battalions of infantry, with a battalion staff, where the local situation of the troops is such that they cannot be conveniently connected to a regiment. And where by the division of any corps, a new division or brigade shall be so formed as to leave but three



SECT. 7. *Be it further enacted*, That the commissioned officers of the militia, named in the aforesaid laws of the United States, shall be chosen and appointed in manner following : CH. 164.  
[1b. § 3.]

|                                                                            |                                                                                                                                         |
|----------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| <i>The Major Generals</i>                                                  | { To be chosen by the Senate and House of Representatives, each having a negative on the other, and to be commissioned by the Governor. |
| <i>The Adjutant General and Quarter Master General</i>                     | { To be appointed (a) by the Governor with the advice of Council, with the rank of Brigadier General.                                   |
| <i>The Division Inspectors</i>                                             | { To be appointed by the Major Generals of their respective divisions, with the rank of Lieut. Colonel.                                 |
| <i>The Aids-de-Camp of the Major Generals</i>                              | { To be appointed by their respective Major Generals, with the rank of Major.                                                           |
| <i>The Division Quarter Masters</i>                                        | { To be appointed by the Major Generals of their respective Divisions, with the rank of Major.                                          |
| <i>The Brigadier Generals</i>                                              | { To be chosen by the written votes of the field officers of their respective brigades.                                                 |
| <i>The Brigade Majors</i>                                                  | { To be appointed by their respective Brigadier Generals, with the rank of Major.                                                       |
| <i>The* Aids-de-Camp and Quarter Masters of brigades</i>                   | { To be appointed by the Brigadier Generals of their respective brigades, with the rank of Captain.                                     |
| <i>The field officers of regiments and battalions</i>                      | { To be chosen by the written votes of the Captains and subalterns of their respective regiments and battalions.                        |
| <i>The Captains and Subalterns of companies</i>                            | { To be chosen by the written votes of the members of their respective companies.                                                       |
| <i>The Adjutants, the Quarter Masters and the Pay Masters of regiments</i> | { To be appointed by the Colonels of their respective regiments, with the rank of Lieutenant.                                           |
| <i>The Chaplains, the Surgeons, and the Surgeons' Mates of regiments</i>   | { To be appointed by the Colonels of their respective regiments.                                                                        |

[\*698]

companies of any regiment of cavalry or artillery, or where by the disbanding of any company, such regiment of cavalry or artillery shall be reduced to three companies, such three companies shall still constitute a regiment, and all the officers thereof shall retain their command and rank, the same as though said corps had not been reduced."

2. It is provided by act passed March 9, 1832, § 12, "That companies of cavalry, artillery, light infantry, grenadiers or riflemen may be raised at large, when the standing companies shall not be thereby reduced to a less number than forty effective privates."

(a) It is provided by ch. 424, vol. 3, p. 268, as follows :—

"That the tenure of the office of the Adjutant General of the militia of this State, be and hereby is limited to the term of four years from the time of appointment : *Provided however*, That the person now in that office may hold the same, for the space of four years from the passing of this act. *And provided further*, That nothing herein contained shall prevent the present incumbent, or any one who may be hereafter appointed, from being removed from office at any time before the expiration of said term of four years, at the pleasure of the Governor and Council."



**CH. 164.** And the aforementioned officers shall be commissioned by the Governor.

Non-commissioned officers, how appointed.

[Ib. § 4.]

**SECT. 8.** *Be it further enacted,* That the non-commissioned officers, named in the aforesaid laws of the United States, shall be appointed in the manner following :

*The non-commissioned officers of companies*

{ To be appointed by the Captains of their respective companies, who shall forthwith make return thereof to the Commanding officers (b) of their respective regiments or battalions and they shall grant them warrants accordingly.

Governor's aids.

[Ib. § 5.]

**SECT. 9.** *Be it further enacted,* That in addition to the commissioned and non-commissioned officers above enumerated, the following officers and non-commissioned officers shall be appointed in the manner following :

*Aids-de-Camp to the Commander in Chief, not to exceed four in number*

{ To be appointed and commissioned by the Governor, with the rank of Lieutenant Colonel.

[†Repealed; see ch. 867, vol. 8, p. 217.]  
[\*699]

*A Judge Advocate for each Division*

{ To be nominated by the Major General of each Division, and if approved by the Governor, to be commissioned by him, with the rank of Major.†

Adjutant and quarter master of artillery and cavalry.

*An\* Adjutant and Quarter Master to each battalion of artillery and cavalry*

{ To be appointed by the Commanding officers of their respective battalions, and to be commissioned by the Governor, with the rank of Lieutenant.

Non-commissioned regimental staff officers.

*A Quarter Master Sergeant, and a Sergeant Major (c) to each regiment, and a Drum and Fife Major, Master, Deputy Master and Musicians of the regimental bands*

{ To be appointed by the Colonels of their respective regiments, who shall grant them warrants accordingly.

Battalion do. in artillery and cavalry.

*A Quarter Master Sergeant to each battalion of artillery and cavalry*

{ To be appointed by the Commanding officers of their respective battalions, who shall grant them warrants accordingly.

Major general to give orders for elections.

[Ib. § 6.]

Electors to have 10 days' notice.

Returns to be made to Governor.

**SECT. 10.** *Be it further enacted,* That each Major General, be and he hereby is authorized, and it shall be his duty from time to time to give all such orders, as may be necessary, for filling by election any vacancy or vacancies of Brigadier General, Field Officer, Captain or Subaltern, which does now or may hereafter exist, within his division. And previous to any such election, the electors shall have ten days' notice thereof at least; and all returns of elections, or of neglects or refusals to elect, shall be made to the Command-

(b) The commanding officer of a regiment, *for the time being*, is the proper officer to sign the sergeant's warrant. *Tripp vs. Garcey*, 7 Glf. 266.

(c) A private in a volunteer company is capable of an appointment to the office of sergeant major of the regiment, to which the company is attached : And so long as he retains the office, he is excused from doing duty in the company. *Com. vs. Thaxter*, 11 Mass, 886.



er in Chief, by the Major Generals in whose divisions such elections shall have been ordered ; and in case of neglect or refusal by the electors to elect (*d*) any officer, when duly notified and ordered thereto, the Governor with the advice of Council shall appoint some suitable person to fill such vacancy. And all commissions shall be transmitted to the Major Generals and be regularly passed down to the persons entitled to receive them. And every person, who shall be elected to any office as aforesaid, and shall not within ten (*e*) days, after he shall have been notified of his election, by the officer who presided thereat, (excepting in case of the choice of Major General, who shall be allowed thirty days after he shall be notified by the Secretary of this State,) signify his acceptance thereof, shall be considered as declining to serve, and orders shall be forthwith issued for a new choice. And the commission of every officer shall designate\* the division, brigade, regiment or battalion, and the corps in which he shall be commissioned, and all officers shall take rank from the day of their elections or appointments respectively, which shall be designated in their commissions. And whenever an officer is transferred from one corps or station to another in the same grade, the day of the date of his original appointment or election shall be expressed in his new commission, and

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Governor to appoint when electors neglect.

Commissions to be sent to major general and passed down.

Officers elect allowed time to accept or decline.

[\*700]

Officers transferred how to rank.

(*d*) 1. It is provided by act passed March 9, 1832, § 5, as follows :—

“That if any company shall refuse to, or neglect to choose officers, when thereto required, or refuse or neglect to do duty as prescribed by law, the Colonel or Commanding officer of the Regiment to which said company belongs, shall report the fact to the Commander in Chief, who shall immediately disband said company, and order the non-commissioned officers, musicians and privates thereof to be eurolled in the oldest adjoining standing company. and they shall be held to do therein all the duties required by law.

2. It is provided by ch. 319, § 7, vol. 3, p. 165, as follows :—

“That no election for the choice of Brigadier General or field officer shall be valid, unless a majority of all the electors, qualified by law to vote in such choice, (counting all existing vacancies in the offices of such electors) shall be present at such election.”

(*e*) It is provided by act passed March 9, 1832, § 10, as follows :—

“That any person, who may be elected to any office in any company of the militia, shall have one hour after notice of his election in which to accept or refuse the same ; and if he shall not signify his acceptance of said office within said time of one hour he shall be considered by the presiding officer as having declined the same.”



CH. 164. *that day be considered the date of his commission. And when an officer shall by fire or other casualty, lose his commission, upon his making an affidavit thereof, before any Judge or Justice of any Court of Record, in the county where he resides, on such affidavit being produced at the Adjutant General's office, he shall be entitled to receive a new commission of the same tenor and date as the one so lost as aforesaid.†*

[†Part in italics repealed; see ch. 319, § 6, vol. 3. p. 165.]

Rank of officers on duty, by date of commissions:

when of equal grade and date, how settled.

And all officers when on duty shall take rank by the dates of their commissions as above defined. And when two or more officers of the same grade are on duty together, and their commissions bear an equal date, and former pretensions of some commission do not decide, then their relative rank with each other shall be determined by lot, to be drawn by them before the Commanding officer present, and when on court martial before the president thereof.

Commissioned officer's oath of office.

[Ib. § 7.]

Oath before whom.

SECT. 11. *Be it further enacted, That every officer, duly commissioned in pursuance of the provisions of this act, shall, before he enters upon the discharge of the duties of his office, take and subscribe the oaths required by the Constitution, before some Justice of the Peace, or before some superior Field, or General officer, or Staff officer of the rank of Field officer, who has previously taken and subscribed them himself. And on the back of every military commission the following form of certificate of qualification shall be printed.*

“STATE OF MAINE.

Certificate of oath.

This may certify, that ———, commissioned as within, on this ——— day of ———, A. D. 18—, personally appeared and took and subscribed the oaths required by the Constitution of this State, to qualify him to discharge the duties of his office.  
Before me, ———, ———.”

[\*701] Clerk of company.

[Ib. § 8.]

SECT. 12.\* *Be it further enacted, That to every company there shall be a clerk, who shall be one of the sergeants, and he shall be appointed by the Captain or Commanding officer of the company, and on the back of his warrant as sergeant, the Captain or Commanding officer of the company, shall in writing certify (f) that he does thereby appoint him to*

(f) 1. Where the clerk of a militia company had no other evidence of his appointment than a certificate on the back of his sergeant's warrant, stating that he, “appointed clerk, &c.” had taken the oath of office—it was held not sufficient to satisfy the requirement of § 12. *Abbott vs. Crawford*, 6 Glf. 214. See onward.



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be clerk of the company. And before such clerk enters upon the duties of his clerkship, he shall be sworn (g) to the faithful discharge of his duty, by taking the following oath before the captain or commanding officer of the company to which he belongs, who is hereby authorized to administer the same, viz.

Oath of clerk.

"I, A. B. do solemnly swear, that I will faithfully and impartially perform all the duties incumbent on me, as Clerk of the company to which I belong, according to the best of my abilities and understanding. *So help me GOD.*"

And the Captain or Commanding officer of the company shall at the time of his administering said oath, certify on the back of the warrant of the sergeant appointed to be clerk that he was duly qualified, by taking the oath required by law. And it shall be the duty of the clerk to keep a fair and exact roll of the company, together with the state of the arms and equipments, belonging to each man, which roll he shall annually revise, in the month of May, and correct the same, from time to time, as the state of, and alterations in, the company may require; to register all orders and proceedings of the company, in the orderly book; to keep exact

Captain to administer oath to clerk.

Duties of clerk.

2. The only legal evidence of the appointment of a clerk of a company of militia, is the captain's certificate on the back of his sergeant's warrant, "that he does thereby appoint him to be clerk of the company." *Tripp vs. Garey*, 7 Glf. 266.

3. On the back of a sergeant's warrant was a certificate that he had "taken and subscribed the oath according to law before me, J. T. W. commanding officer." *Held*, that this was not a sufficient certificate of his being appointed clerk of the company, and that it could not be amended by inserting the words of appointment, to sustain a prosecution commenced by him as clerk. *Com. vs. Hall*, 8 Pick. 262. But—

4. Where a captain of a company of militia certified on the warrant of a sergeant, that such sergeant 'has been appointed clerk of said company and has taken the oath necessary to qualify him to discharge the duties of his office,' without dating the certificate, it was *held*, that the captain (then become major) might amend by affixing the date, and also that parol evidence of the time was admissible; that the oath must be presumed to have been administered by the captain; and that the certificate was sufficient, though it did not set forth the oath which was administered. *Clappet vs. Watson*, 8 Pick. 449.

5. A captain has a right to accept the resignation of the clerk of his company. *Field's cases*, 9 Pick. 41.

(g) Parol evidence that the clerk had been duly sworn, is not admissible; but the fact must be proved by certificate on the back of warrant by the officer who administered the oath. *Sherman vs. Needham*, 4 Pick. 66.



**CH. 164.** details of all drafts and detachments; to assist the Commanding officer of the company, in the enrolment thereof; and also in enrolling (*h*) of all such persons without partiality or favour, liable to any military duty, coming to live within his company bounds, as he may from time to time be informed thereof; to distribute all company orders and notifications, which he may be required to do; to examine the equipments of the men, when ordered; to note all delinquencies, to sue (*i*) for and recover all fines and forfeitures, which are required by this act, to be sued for and recovered by him; to keep accounts in the orderly book of all fines and forfeitures, and all other monies, collected by him, with the persons' names, of whom they were collected, and of the times when, and for what offence, neglect, default, or deficiency; which\* book shall not be alienated from the company, and shall always be open to the inspection of any officer of the company.

[\*702]

**SECT. 13.** *Be it further enacted,* That the officers of

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(*h*) 1. The day on which the name of a person is placed on the muster roll, should be entered in the proper column for that purpose in the form prescribed by the Adjutant General; and parol evidence is not admissible to supply the omission of such entry. *Sawtel vs. Davis*, 5 *Gl.* 438.

2. C. J. H. was enrolled in a company by the name of C. H. *Held*, that he was not duly enrolled. *Com. vs. Hall*, 3 *Pick.* 262.

3. A person having a temporary residence for a special purpose at a place where he is not domiciled, is not liable to be there enrolled in the militia. *Com. vs. Swan*, 1 *Pick.* 196.

(*i*) It is provided by act passed March 9, 1822, § 3, "That in every case in which it is made the duty of any clerk to prosecute for any fines incurred by virtue of this act, or the act to which this is additional, if said clerk shall unreasonably refuse to prosecute for the same, he shall pay a fine of five dollars for each and every such neglect, to be recovered by complaint before any Justice of the Peace for the county in which said clerk resides. And if there be no clerk to prosecute, as aforesaid, the captain, or commanding officer of the company shall prosecute for said fines, for the use of the company, and upon neglect so to do, shall be subjected to trial by a court martial; and if found guilty, shall be removed from office: *Provided however*, That such complaint may be made before the Judge of the Municipal Court when the cause of complaint shall arise in the town of Portland."

And by § 4, of same act, "That the commission of captain, or commanding officer of any company shall, in all actions for the recovery of fines, or forfeitures, under this act or the act to which this is additional, be deemed sufficient evidence of the organization of such company."



the Militia (chaplains excepted) while on duty, shall wear a uniform dress, to consist of a blue cloth coat, with gilt† buttons with a star raised thereon, and other articles of dress of such color and fashion, and with such equipments as shall be prescribed by the Commander in Chief; except where the same is regulated by the laws of the United States. CH. 164.

[†Repealed;  
see ch. 240,  
vol. 8, p. 71.]

SECT. 14. *Be it further enacted*, That every officer, non-commissioned officer, and private, shall hold his uniform exempted from all suits, distresses, executions or sales for debt, or the payment of taxes. And no officer, non-commissioned officer, nor private shall be arrested on any civil process, during his going unto, returning from, or his performance of military duty; nor during his going unto, remaining at, or returning from any place, at which he may be ordered to meet for the election of any officer or officers. And no officer shall be arrested on any civil process while going unto, serving upon, or returning from any court martial, court of inquiry, or board of officers, upon which it may be the duty of such officer to attend.

Uniform of of  
ficers and pri-  
vates exempt-  
ed from at-  
tachment, &c.

Officers and  
privates ex-  
empted from  
arrest while on  
military duty,  
&c.

[Ib. § 11.]

SECT. 15. *Be it further enacted*, That every officer, non-commissioned officer and private of infantry, light infantry, cavalry, artillery, grenadiers and riflemen, shall constantly(j) keep himself furnished and provided with arms and equipments required by the laws of the United States before recited, except such private as shall not be able so to provide himself. And no private shall be considered unable to provide himself with the arms and equipments required as aforesaid, unless he shall produce, after the first day of April and before the first Tuesday of May annually, to the commanding officer of the company to which he belongs, a certificate of such inability, from the Overseers of the poor, of the town or district where he resides. And the Commanding officer

Officers, pri-  
vates, &c. to  
be constantly  
armed and  
equipped.

[Ib. § 9.]

(j) 1. Notwithstanding the provisions of § 2 of the U. S. act of Mar. 2, 1803,† and of § 15 of this act, a non-commissioned officer or soldier is not liable to a penalty for a deficiency in his equipments, until six months after he is notified of his enrolment. *Com. vs. Annis*, 9 Mass. 81. [†See ante, p. 810.]

2. A citizen is not liable to a penalty for non-appearance at a company training, &c. until six months after he is notified of his *first* enrolment in the militia. It seems that he is not entitled more than once to this six months indulgence. *Haynes vs. Jenks*, 2 Pick. 172.



## CH. 164.

Selectmen to provide arms and equipments, in case of inability of privates to furnish themselves.  
[\*703]

Commanding officers to be responsible for safe keeping of arms, &c. so provided.

Vacancies of superior officers how provided for.

[lb. § 18.]

Vacancies of company officers how provided for.

of the company to which such private belongs, shall forthwith lay such certificate before the Selectmen of the town or district where such private resides. And it shall be the duty of such Selectmen, forthwith, at the expense of their respective\* towns or districts, to provide for every such private, the arms and equipments required as aforesaid, and they shall deposite the same in some safe and convenient place, and shall permit the Commanding officer of the company, to which such private, unable to provide himself, as aforesaid, belongs, to deliver such arms and equipments to such private, whenever his company shall be ordered out for any military duty. And the said commanding officer shall be responsible for the safe return of such arms and equipments to the place of deposit.

SECT. 16. *Be it further enacted*, That whenever the office of Major General, Brigadier General, Colonel, Major Commandant, or of Captain, shall be vacant, the officer next in grade and in commission, in the division, brigade, regiment, battalion, or company, shall exercise the command, and perform the duties thereof, until the vacancy shall be supplied. And in case of the sickness, absence, or other inability of the clerk of any company, the Commanding officer thereof is hereby authorized to appoint a clerk pro tempore, who shall be duly sworn before he enters on the duties of the office; and shall for the time expressed in his appointment or till specially discharged, have all the powers, and be subject to all the duties, and be liable to all the penalties of the clerk, in whose place he is put. And whenever a company shall have neither officers nor non-commissioned officers, the Commanding officer of the regiment or battalion, to which such company belongs, shall appoint suitable persons within said company to be non-commissioned officers of the same, and grant them warrants accordingly, one of which non-commissioned officers he shall appoint clerk, and shall endorse the warrant of the non-commissioned officer, appointed clerk, and administer the oath to him, as required by the Commanding officers of companies, in the twelfth section of this act, and the senior non-commissioned officer of a company, while there are no commissioned officers in office,



## CH. 164.

shall command the same; and all the authorities and powers of Commanding officer shall be vested in him, until some commissioned officer shall be chosen or appointed and has qualified himself: *Provided however*, That when a company, destitute of commissioned officers, shall parade with other\* troops, the Commanding officer present shall assign some commissioned officer or officers to such destitute company, to command the same while on parade.

Company paraded without commissioned officers, how provided.  
[\*704]

SECT. 17. *Be it further enacted (k)*, That [in] each brigade, where there are now, or may hereafter be two companies of artillery, they shall form a battalion, and be entitled to a Major, an Adjutant, and a Quarter Master; that in each brigade, where there are now, or shall hereafter be three companies of artillery, they shall still form one battalion; and that in each brigade, where there are now, or may hereafter be four companies of artillery, they shall form a regiment of two battalions, and be entitled to a Colonel, Lieutenant Colonel, and Major. And each company of artillery shall be provided by the Quarter Master General with two good brass field pieces, of such calibre as the Commander in Chief may direct, with carriages and apparatus complete; an ammunition cart, forty round shot, and forty rounds of cannister shot; also tumbrils, harness, implements, laboratory, and ordnance stores, which may from time to time be necessary for their complete equipment for the field. And the Commander in Chief shall order to be issued, to each company of artillery, annually, a quantity of powder, not exceeding forty pounds, which shall be expended on days of inspection or review, and in experimental gunnery. And the commanding officer of every company of artillery shall be accountable for the careful preservation of the pieces, and all the apparatus aforesaid appertaining to their equipment, and for the proper expenditure of the ammunition supplied by the government. And the commanding officer of every company of artillery shall lay before the committee on accounts for allowance, his accounts of money actually expended in providing horses to draw the field pieces and tumbril of his company: *Provided however*, No allowance shall be made, unless such company

Artillery, how arranged and equipped.

[ib. § 14.]


Field pieces how provided.

Ammunition, &c. to be furnished by quarter master general.

Proviso.

(k) See notes y and z, § 6, ante p. 816.



**CH. 164.**  is ordered to appear at a battalion, regimental, brigade, or division inspection, or review, or unless such company is ordered on duty by the Commander in Chief. And each commanding officer of a company of artillery is hereby authorized to enlist three drivers, who, when enlisted, shall be exempted from other military duty, except\* that of keeping the harnesses and apparatus of the carriages, belonging to the company, in good order.

Drivers to be enlisted.

[\*705]

Cavalry, how arranged and equipped.

[Ib. § 15]

**SECT. 18.** *Be it further enacted,* That where there are now, or may hereafter be, two companies of cavalry in a brigade, they shall form a battalion, and be entitled to a Major, an Adjutant and a Quarter Master. And in those brigades, where there are now, or may hereafter be, three companies of cavalry, they shall still form a battalion; and in each brigade, where there are now, or may hereafter be, four companies of cavalry, they shall form a regiment of two battalions, and be entitled to a Colonel, Lieutenant Colonel and Major. And if any non-commissioned officer or private of any company of cavalry shall be destitute of a suitable horse and furniture for more than two months, at one time, it shall be the duty of the Commanding officer of the company immediately to apply to the Brigadier General of the brigade, who may discharge such non-commissioned officer or private from such company, and cause him to be enrolled in the standing company within whose bounds he resides, and if he be a non-commissioned officer, he shall be considered as reduced to the ranks. And when any draft or detachment shall be made from any company of cavalry for actual service, the men drafted or detached shall march with their own horses, and before they march, if there be time, the horses shall be appraised by three impartial men, to be appointed by the Commanding officer of the brigade, to which the company belongs, from which the draft or detachment is ordered.

Men drafted from cavalry to have their horses appraised.

Cavalry, artillery, &c. not to be raised by reducing standing companies below 48 privates.

**SECT. 19.** *Be it further enacted,* That no company of cavalry, artillery, light infantry, grenadiers, or riflemen, shall be raised at large when any of the standing companies shall thereby be reduced to a less number than forty-eight effective privates (1); and if any officer of cavalry, artillery, light

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(1) It is provided by ch. 476, vol. 3, p. 322 :—

“That whenever any person shall enlist into any company of Cavalry, Ar-



infantry, grenadiers, or riflemen, shall enlist any men, belonging to a standing company, or residing within the bounds thereof, for the purpose of forming or recruiting his company, when by means thereof such standing company would be reduced to a less number than forty-eight (*m*) effective privates borne on the company roll, exclusive of those between the ages of forty and forty-five years, such enlistment shall be void.\* And if any company, raised at large, shall at any time be destitute of commissioned officers, and shall neglect to fill the vacancies for two months, after being ordered to choose officers to fill them, or if any such company shall be reduced to a less number than twenty privates, and remain so for three months, then in either case as aforesaid, such company shall be disbanded, and the men which belonged to such delinquent company shall be enrolled in the standing company within the bounds of which they respectively reside (*n*). And all companies, raised at large, and not annex-

CH. 164. .

[Ib. § 16.]

[\*706]

Companies, raised at large, may be disbanded in certain cases.

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tillery, Light Infantry, Grenadiers, or Riflemen, the commanding officer of the company, into which such person may enlist, shall give notice thereof, in writing, to the commanding officer of the standing company, to [in] which such person is liable to do duty, within five days from the time of such enlistment, and state in such notice, the date of enlistment, otherwise the same shall be void, although the standing company should not thereby be reduced to a less number than forty-eight effective privates.”

(*m*) A private in the militia is not discharged from the company to which he belongs by an absence of six months from the brigade, without an intention to change his domicil. *Com. vs. Walker*, 4 Mass. 556. See note to Art. 14, of § 45, onward.

(*n*) 1. A standing company of militia being without any officers, orderly book or company roll, and having, in order to avoid military duty, frequently elected as officers persons who it was known would decline, the commander in chief made a general order to disband the company, provided they should, after due notice, refuse or neglect to choose officers who would bring them into service. After this a meeting was warned, (but in what manner did not appear,) in pursuance of verbal orders to several privates, and forty or fifty members attended and elected six persons successively as captain, who all declined. Another meeting was warned by posting up notice in a public place, and a major part of the company attended and elected a person captain who declined; after which the company was disbanded. It was held, that the notice of the meetings, though it might not be strictly legal so as to give validity to an election, was yet sufficient for the purpose of allowing the company to avail themselves of the indulgence of the commander in chief. *Adams Certiorari*, 4 Pick. 25.

2. See note *d*, 1, ante p. 819.



**CH. 164.**  ed to any particular regiment, shall be subject to the orders of the commanding officer of the brigade in which they have been raised ; and shall make their elections of officers in the same manner as other companies, but shall make their returns of elections to the commanding officer of the brigade. And at all parades of regiments, the companies commanded by the two senior Captains shall act as light infantry companies, except where companies of light infantry, grenadiers, or riflemen, have been or may be hereafter raised and annexed to the regiment.

**Regimental  
bands of music  
to be raised.**

**How organiz-  
ed.**

**[Ib. § 17.]**

**SECT. 20.** *Be it further enacted,* That each Colonel or Commanding officer of a regiment be, and he is hereby authorised, to raise, by voluntary enlistment, within his own regiment, or any adjoining regiment, with the written consent of the Commanding officer of such regiment, and organize and establish within his regiment a band of music not to exceed twenty musicians, including one master and one deputy master, and the Colonel or Commanding officer shall grant the musicians, deputy master and master of such band, warrants as such (o).

And each band shall be under the direction of the Commanding officer of the regiment in which it is organized.

**Duties, &c.**

And it shall be the duty of the master and deputy master, to teach, lead and command such band, and to issue all such orders as they may be, by their Colonel or Commanding officer, authorised to do for these purposes.

**[\*707]**

And each master, deputy master and musician shall constantly keep himself provided with the uniform of the band to which he belongs, which uniform is to be prescribed in the same manner as the uniform of the regiment to which the\* band belongs—and shall also keep himself constantly provided with such instrument or instruments, as may be directed by the Commanding officer of the regiment.

And the bands belonging to the regiments, shall also be under the Brigadier General or the Commanding officer of the brigade, (the senior master present, having the direction of said bands,) wherever the said regiments shall meet in brigade.

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(o) See act passed March 18, 1838.



And if any master, deputy master or musician shall be guilty of any neglect of duty, disobedience of orders, disorderly or other unmilitary conduct, he shall forfeit not less than five nor more than twenty dollars, for each offence, one half thereof to the use of the officer, suing therefor, and the other half to the Colonel of the regiment, to which the offender may belong, for the purchase and repair of musical instruments for said band, to be sued for by the Adjutant of the regiment; or by the Brigade Major of the brigade, if assembled in brigade; in an action on the case before any Justice of the Peace in the county where the offender resides, and no appeal shall be allowed to either party; and such master, deputy master or musician, shall moreover be liable to be removed from the band at the discretion of the Colonel or Commanding officer of the regiment, within which such band is organized, and shall forthwith be enrolled as a private in the standing company, within the bounds of which he resides.

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Musicians,  
how punished  
for neglect,  
disobedience,  
&c.

And each master, deputy master and musician of a band, shall be exempted from all military duty while belonging to the band, excepting such as shall be required of him by the Colonel or Commanding officer of the regiment, or by the Brigadier General or Commanding officer of the brigade when the regiments are assembled in Brigade.

Musicians ex-  
empted from  
other military  
duty.

SECT. 21. *Be it further enacted*, That every Commanding officer of a company shall parade his company on the first Tuesday of May(*p*) annually, at one of the clock in the afternoon, for the purpose of inspecting, examining, and taking an exact account of all the equipments of his men, and for noting all delinquencies of appearance, and deficiencies of equipment, and for correcting his company roll, in order, that a thorough inspection of each company in the State may be\* made. And it shall be the duty of every

Companies to  
be paraded for  
inspection on  
the first Tues-  
day of May;  
and on two oth-  
er days in the  
year for train-  
ing.

[Ib. § 18.]

[\*708]

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(*p*) Times of Inspection have been altered; see ch. 819, vol. 3, p. 162; act passed March 9, 1882, ch. 45; and act passed March 18, 1883, ch. 90.

[It is the duty of the commanding officer of a company to cause his company to be paraded for annual inspection and drill, according to the requirement of law, without the order of any superior officer. *State vs. Small, Smith's Court Martial Reports*, 71. Nor can he devolve this duty upon a subaltern, so as to discharge himself, nor by absenting himself on the eve appointed by law for this duty. *Ib.*]



**CH. 164.** Commanding officer of a company, to parade his company by his own order, on two several days in the year for training, in addition to the company inspection aforesaid; and on the three several days of training and inspection, to use his best exertions, in instructing and perfecting his men, in their company exercise and evolutions. And whenever the Commanding officer of a company, shall order out his company for inspection or training, or for any battalion, regimental, brigade, or division inspection, or review, he shall issue his (*q*) orders to some one or more of the non-commissioned officers or privates of his company, requiring him or them, to notify the men belonging to his company to appear at the time and

Mode of notifying men to appear.

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(*q*) 1. A warning in writing in good form, left at the house of a soldier by a stranger, under the direction of a non-commissioned officer, is sufficient. *Com. vs. Cutter*, 8 *Mass.* 279.

2. A private who had orders from the commanding officer, made the notifications in due form, and signed them without any declaration that it had been done pursuant to orders, and the notifications were holden sufficient. *Com. vs. Derby*, 13 *Mass.* 433.

3. An order to a warning officer to warn a meeting of the company, signed "by order of said commanding officer, A. B. clerk," instead of being signed by the commanding officer himself, is in due form. *Field's case*, 9 *Pick.* 41. In *Com. vs. Kellogg*, 9 *Pick.* 557, it was held that the commanding officer cannot delegate the power of appointing a person to warn his men to appear at a company parade.

4. A non-commissioned officer or private, who is ordered by the commanding officer of his company to warn the members, is not justified in wholly disobeying the order, because the number required to be warned by him is unreasonably large; but he must execute so much of the order as lies in his power. *Fiske vs. Parker* 10 *Pick.* 134.

[A notice of a company meeting by a commanding officer to his subaltern officers, need not be in writing, nor transmitted by a third person. *State vs. Leighton*, *Smith's Court Martial Reports*, 68.

A written order need not contain the name of the person to whom it is addressed, if the order be handed to him by the proper officer in command. *State vs. Small*, *Ib.* 57.

So a written order with the name of the officer for whom it is intended on the back of it is sufficient, although omitted on the inside. *State vs. Moody*, *Ib.* 80.

Language capable of being readily understood, is sufficient to constitute an order, without strict regard to form. *State vs. Small*, *Ib.* 57.

If an order be understood by the officer to whom it is addressed, as directed to him, he will be holden to obey it, although his name is mistaken, and he is addressed by a different name. *State vs. Hill*, *Ib.* 83.]



place appointed; and it shall be the duty of the non-commissioned officer or officers, private or privates, so ordered as aforesaid, to give notice of the time and place appointed for the parade of said company, to each and every man, he or they shall have been ordered to notify, either verbally or by delivering to each man in person, or by leaving at his usual place of abode (r), a written or printed order. And no notice shall be legal, for any company inspection or training, or for any battalion, regimental, brigade, or division inspection, or review, unless the same shall be given four days at least previous to the time appointed therefor. *Provided always*, That in case of invasion, insurrection, or other emergency, any notice, however short, shall be legal and binding. And in all cases the testimony of the clerk (s) or any other non-commissioned officer or private, who shall have received orders to notify the whole or any part of the men, of any company to appear at a time and place appointed, for any military duty, shall be conclusive to prove, that due notice was given to the party prosecuted, unless such testimony be invalidated by other evidence. And whenever any company shall be paraded, the commanding officer of such company is hereby authorized verbally to notify the men so paraded, to appear on some future day, not exceeding thirty days from the time of such notification, and such notice shall be legal as it respects the men present: *Provided*, That no soldier shall be compelled to perform more than four days military duty in\* one year, except in time of war or public danger, and for choice of officers (t).

Legal notice.

Proof of notice.

Verbal notice.

No soldier to be compelled to do military duty more than four days in a year.

[\*709]

Commanding officers to fix limits to their parade.

SECT. 22. *Be it further enacted*, That every Commanding officer, when on duty, is hereby authorized to ascertain

(r) A warning left at the private's workshop is not sufficient. *Carr vs. Cummings*, 16 Mass. 194. So where A. occupied one half and B. the other half of a dwelling house, and a notification was left at B.'s part of the house, for A. to appear, &c., it was held to be an insufficient warning. *Washburn's case*, 9 Pick. 40.

(s) The clerk is incompetent to testify to any other fact than that he gave notice to the private at such meeting. *Com. vs. Paull*, 4 Pick. 251.

(t) See ch. 319, § 2, vol. 3, p. 163; and ch. 413, § 1, vol. 3, p. 261.

[A company called out for an election of officers cannot be required to perform other duties. *State vs. Akers*, *Smith's Court Martial Reports*, 61.]



**CH. 164.** and fix necessary limits and bounds to his parade, (no road in which people usually travel to be included) within which no spectator shall have a right to enter, without liberty from such commanding officer; and in case any person shall intrude within the limits of the parade after being once forbidden, he shall be subject to be confined under guard during the time of the parade, or a shorter time, at the discretion of the commanding officer.

Age, how proved.

[Ib. § 20.]

Penalty for refusing to give name, or false one, on inquiry.

**SECT. 23.** *Be it further enacted,* That in all cases of doubt respecting the age of any person intended to be enrolled, the party questioned as to his age shall prove the same to the satisfaction of the enrolling officer; and if any person liable to military duty, upon application to him personally by the Commanding officer of the company, within the bounds of which such person resides, or upon application by any person acting under such Commanding officer, shall either refuse to give his name, or not give his name truly, every such person, so offending shall forfeit twelve dollars, to be sued for by the Clerk of the company in an action on the case before any Justice of the Peace of the county where such offender resides.

Mode of notifying for choice of officers.

[Ib. § 21.]

[†See note d, 2, ante p. 819.]


**SECT. 24.** *Be it further enacted,* That when any non-commissioned officer or private in any company, shall receive orders from the Commanding officer of such company, to notify and warn such company, or any part thereof, to meet for the purpose of choosing any officer or officers, it shall be the duty of such non-commissioned officer or private, to give every person he is so ordered to warn, verbal notice, or to leave him a written or printed notification at his usual place of abode, specifying the time, place, and purpose of said meeting; and no election of a company† officer shall be valid in future, unless a majority of the voters of the company are present at the election.

Company musicians may be enlisted.

[\*710]

**SECT. 25.** *Be it further enacted,* That each and every Captain or Commanding officer of any company is hereby empowered to enlist, as musicians for his company, and within the\* bounds of the same, not exceeding two drummers and two fifiers, or one fifer and one bugler, for and during the term of seven years, unless sooner discharged by removal to such distance from the said company, as to render it incon-



venient for said musician to perform the duties required of **CH. 164.**  
him, or by reason of some other good and legal excuse. 

And any such musician, so enlisted, who after having been Penalty for neglect of duty, &c.  
duly notified and warned shall refuse to perform his duty as musician at all legal meetings of said company, shall forfeit and pay for every such offence, the same sum as would be forfeited by any non-commissioned officer or private for non-appearance at any of said meetings; and in case of removal or discharge of any such musician, the said Captain or Commanding officer may from time to time enlist other musicians to fill such vacancy or vacancies.

**SECT. 26.** *Be it further enacted,* That every town and plantation within this State, shall provide and deposit, and constantly keep provided and deposited in some suitable and convenient place within said town or plantation, thirty-two Towns, &c. to be provided with ammunition :  
pounds of good gunpowder (u); one hundred pounds of musket balls, each of the eighteenth part of a pound : one hundred twenty-eight flints, suitable for muskets ; three copper, iron, or tin camp kettles, for every sixty-four soldiers enrolled within said town or plantation, except artillerists ; and the same proportion of the aforesaid articles for a greater or a less number of soldiers enrolled as aforesaid. And every penalty for neglect.  
town or plantation, which shall neglect to keep itself constantly provided with the articles aforesaid, and in the proportions aforesaid, shall forfeit and pay to the use of the State, a sum not exceeding five hundred dollars, nor less than twenty dollars, according to the nature and degree of the neglect to be recovered by indictment or information in any Court of competent jurisdiction. And it shall be the duty of each Quarter masters of infantry to prosecute delinquent towns.  
Quarter Master of regiments of infantry to cause every town or plantation within the bounds of his regiment, to be prosecuted or presented, which town or plantation he shall find upon his inspection to be deficient, either in the quality or quantity of military stores, required to be provided as aforesaid, or which he shall find to have neglected to make the provisions, or any part thereof required as aforesaid.

**SECT. 27.\*** *Be it further enacted,* That it shall be the duty of the Quarter Master of each regiment of infantry, in [\*711] Quarter masters of regi-

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(u) This provision is conditionally repealed, by ch. 869, vol. 3, p. 222.



## CH. 164.

ments to inspect town military stores in October, [Ib. § 22.] and make return to brigade quarter master by first of November.

[†Mass. Stat. Feb. 24, 1820.]

Brigade quarter master to make return to division quarter master by first December, and he to make abstract of brigade returns and transmit copy to quarter master general by first January. Quarter master general to form an abstract of division returns.

Adjutants of regiments, &c. to make abstracts of company returns, &c. and transmit them to brigade inspec-

the month of October annually, personally to examine, view and inspect the military stores, to be provided by every town and plantation as aforesaid, of each town and plantation within the bounds of his regiment, and to make out a return of all the articles of stores, with their quality and condition, in which he shall note all defects and deficiencies and shall transmit an attested copy thereof to the Quarter Master of the brigade, on or before the first day of November in the same year, and where in any town or plantation there are now, or may hereafter be companies belonging to more than one regiment, the Quarter Master of the senior regiment shall perform the duties aforesaid. And the Brigade Quarter Master shall form an abstract of all such returns and transmit an attested copy thereof to the Division Quarter Master, on or before the first day of December in the same year. And the Division Quarter Master shall form an abstract of all such brigade returns, and transmit an attested copy thereof to the acting Quarter Master General of the State on or before the first day of January annually. And the Quarter Master General shall form an abstract of such division returns. And each said officer shall record the abstract, so by him made, in a book to be kept for that purpose, which book shall never be alienated from the corps, to which such officers respectively belong, and shall at all times be open for the inspection of the Commanding officers of said corps, and of the Selectmen of the towns and of the Assessors of plantations, in which such military stores were deposited (v).

SECT. 28. *Be it further enacted (w)*, That it shall be the duty of the several Adjutants of regiments, and of battalions, annually to form a correct abstract of the returns of the several companies, composing his regiment or battalion, containing the names of the Commanding officers of the several

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(v) By ch. 416, § 2, vol. 3, p. 263, it is provided, "That so much of the militia law as provides compensation to Quarter Masters of regiments and brigades, and also so much of the law as requires the personal examination and inspection of military stores, in towns and plantations, be and the same is hereby repealed."

(w) See § 45, art. 18, of this ch. ; also ch. 319, § 5, vol. 3, p. 164 ; also act passed March 18, 1833.



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companies, the number of non-commissioned officers, musicians, and privates respectively belonging thereto, with their arms and equipments, and transmit the same, signed by the Commanding officer of his regiment or battalion and countersigned by himself, to the Brigade Inspector of his brigade on or before the first day of July in the same year; and\* it shall be the duty of the several Brigade Inspectors to make out correct returns from the Adjutants' returns and to transmit the same, signed by the Commanding officers of brigades and countersigned by themselves, to their Division Inspectors on or before the first day of August in the same year; and it shall be the duty of the several Division Inspectors to form similar returns from said brigade returns and to transmit the same, signed by the Commanding officers of divisions and countersigned by themselves, to the office of the Adjutant General on or before the first day of October in the same year. And it shall be the duty of the Adjutant General to form, sign and transmit one correct return of all such division returns to the Commander in Chief, and one to the President of the United States on or before the first day of January annually. And it shall be the duty of the several Commanding officers of regiments, brigades and divisions, to cause such abstracts and returns to be made and transmitted within the several times aforesaid, in all cases of absence or inability of the several Staff officers aforesaid, or of vacancy in their offices. And it shall be the duty of each such Staff officer to record the returns by him made, in a book, to be kept for that purpose and which shall not be alienated from the corps, to which such officers respectively belong. And it shall be the duty of the Adjutant General to furnish such officers with proper books, and from time to time, with blanks, containing proper forms of the abstracts and returns aforesaid.

tor, who will make and transmit abstracts to division inspector.

[\*712]

Division inspector to transmit abstracts to adjutant general by first October.

Orderly books to be kept by staff officers.

[SECT. 29,\* repealed; see ch. 319, § 12, vol 8, p. 166.

It required selectmen to furnish blank cartridges to be used at company reviews.

See also act passed March 9, 1832, § 2.]


[\*713]

SECT. 30. *Be it further enacted*, That whenever in case of threatened or actual invasion, insurrection or other public danger or emergency, the Militia shall be ordered out, or

Persons detached refusing to march, &c. penalty for.



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[Ib. § 24.]

Officers to  
command de-  
tachments, how  
detailed.

Three days'  
provisions for  
men drafted.

Selectmen, &c.  
to furnish sup-  
plies, &c. for  
drafted men,  
and to be reim-  
bursed by le-  
gislation.

[\*714]

Penalty for  
neglect and re-  
fusal in such  
cases.

any part thereof, shall be ordered to be detached or drafted by the Commander in Chief, any person who shall be ordered out, detached, or drafted in pursuance of, and obedience to such orders, and being notified thereof, and ordered to march to the place of rendezvous, and shall neglect or refuse to obey such orders, and shall not within twenty-four hours, after he shall have been notified as aforesaid, pay a fine of fifty dollars, to the Commanding officer of the company to which he belongs, or procure an able bodied man in his stead, such person shall be considered as a soldier, belonging to the detachment, and be dealt with accordingly. And all fines paid as aforesaid, shall be appropriated to the hire of men to complete the detachment. And the officers of any detachment, ordered to be made as aforesaid, shall be regularly detailed from the rosters, and the non-commissioned officers and privates by lot, from the company rolls : and when any company shall not be organized, the officer commanding the brigade or regiment, shall either by himself or some officer under him, proceed to make and complete the detachment, from such unorganized company. And whenever the Militia, or any part thereof, after having been ordered out or detached as aforesaid, and shall be ordered to march for the service of this State, each non-commissioned officer and private, so ordered to march, shall provide and take with him three days' provisions, unless otherwise ordered. And the Selectmen of every town and the Assessors of every plantation to which the men detached as aforesaid, and ordered to march for the service of this State, belong, shall provide and cause carriages to attend them with further supplies and provisions, and also the necessary camp equipage and camp utensils, until notice shall be given them by the Commanding officer of the detachment to desist, and the Selectmen and Assessors shall present their accounts for supplies\* to the Legislature for allowance. And whenever the Selectmen of any town or Assessors of any plantation from which a detachment or part thereof as aforesaid shall march, and being notified by the Commanding officer of such detachment or part thereof, belonging to such town or plantation, and shall neglect or refuse to furnish the necessary supplies, camp equipage,



and camp utensils, the town or plantation to which the Selectmen or Assessors, neglecting or refusing as aforesaid, belong, shall forfeit not less than two hundred nor more than five hundred dollars, to be sued for and recovered by any person, who may prosecute for the same, in an action on the case, in any Court of competent jurisdiction, one moiety to the prosecutor, and the other to the use of the State. And the officer to whom, or by whose order any camp equipage or camp utensils, shall be delivered, shall be accountable for the same, unless injured or lost by some accident not in his power to prevent.

SECT. 31. *Be it further enacted*, That all the troops of each division shall be paraded once in each year for review, inspection and discipline, either in brigades, regiments, or battalions (*x*) of regiments, (regard being had to the scattered or compact situation of the troops) at such times as the Commanding (*y*) officer of the Division may order.† And when a brigade review or inspection is ordered, the Commanding officer of the brigade shall appoint the place, and give notice thereof to the Commanding officer of the division: when a regimental review or inspection is ordered, the Commanding officer of the regiment shall appoint the place, and give notice thereof to the Commanding officer of the brigade; and when a review or inspection of a regimental battalion is ordered, the Commanding officer of the regiment shall appoint the place, and give notice thereof to the Commanding officer of the brigade. And the places to be appointed for reviews or inspections as aforesaid, shall always be as central as, in the judgment of the officer pointing out the place, convenience will admit. And the artillery, cavalry, and other troops raised at large, and not annexed to any particular regi-

All the militia to be paraded for review, &c. once in a year.

[Ib. § 25.]

[†Mass. Stat. Feb. 24, 1820.]


Manner of notifying, &c.

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(*x*) Ch. 283, § 4, vol. 3, p. 124, provides "That any part of the troops of any division may be inspected and reviewed in less bodies than battalions, when by reason of their residence on any of the islands in this State, it may in the opinion of the Major General of such division be deemed expedient." See ch. 819, § 2 & 12, vol. 3, pp. 168, 166.

(*y*) Where an order of the Major General appointed one day for an inspection and the next for a review, it was holden that but one fine was forfeited by a private who neglected to attend on both days. *Com. vs. Derby*, 13 Mass. 433.



CH. 164.  ment, shall be reviewed and inspected once in each year, either by themselves, or with the brigades, regiments, or battalions of regiments, as the Commanding officer of the respective\* divisions may order and direct: *Provided*, That no officer, non-commissioned officer or private, shall be obliged to travel more than fifteen miles to any brigade review (z).

[\*715]

No officer, &c. compelled to travel more than 15 miles to brigade review.

No parade to be allowed on certain town meeting days.

[Ib. § 26.]

SECT. 32. *Be it further enacted*, That no officer, non-commissioned officer or private shall be holden to perform any military duty on any day (except on days which are or may be specially prescribed by law) on which the Selectmen of the town in which such officer, non-commissioned officer or private resides, shall appoint a meeting for the election of a Representative to the Legislature, nor shall there be any military parade on the day pointed out by the Constitution of this State for the election of Governor, and Senators, nor on any day which may be appointed for the choice of electors of President and Vice President of the United States, or Representatives to Congress. And it shall not be lawful for any officer to parade his men on either of said days, unless in case of invasion made or threatened, or in obedience to the orders of the Commander in Chief, except as is herein before excepted.

State colours, drums, fifes, &c. to be furnished by the State.

[Ib. § 27.]

SECT. 33. *Be it further enacted*, That each regiment of infantry and each battalion of cavalry or artillery shall be furnished with the State colours; and each company of infantry, artillery, light infantry, grenadiers and riflemen, shall be furnished with a drum and fife, or bugle horn, and each company of cavalry with a trumpet; and each Brigadier General after the first day of August next ensuing, is hereby authorized to draw orders upon the Quarter Master General, in favor of the Commanding officers of regiments, battalions, and companies, for the above purposes, that the several regiments, battalions and companies may be supplied as aforesaid. And the Commanding officers of regiments and battalions shall be responsible for the safe keeping of their colours; and the Commanding officers of companies shall be

Commanding officers responsible for safe

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(z) This provision is confined to *brigade reviews*. *Com. vs. Richardson*, 13 *Mass.* 320.



responsible for the safe keeping of the drums, fifes, bugle horns, and trumpets, delivered to them for the use of their companies; and it shall be the duty of the Quarter Master General to furnish such colours and musical instruments, and to present his accounts therefor to the Legislature for allowance. And the Adjutant General shall furnish blank orders for the Commanding officers of companies\* to order their non-commissioned officers and privates to notify their men to attend all the inspections, trainings and reviews, and meetings for the choice of officers, which shall be ordered; also blank notifications or orders, to be left with the men by the non-commissioned officers or privates, ordered to notify as aforesaid; and Clerk's complaints to Justices of the Peace; and it shall not be necessary that seals be affixed to any orders whatever.

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keeping of colours, &c.

Adjutant general to furnish blank orders, &c.  
[\*716]

SECT. 34. *Be it further enacted*, That all parents, masters or guardians, shall furnish all minors enrolled in the militia, who shall be under their care respectively, with the arms, and equipments, required by this act; and if any parent, master, or guardian, having any minor under his care, enrolled as aforesaid, shall neglect to provide such minor with the arms and equipments, required by this act; or if said minor shall absent himself from any meeting of the company, to which he belongs, required by law, without sufficient excuse, the said parent, master or guardian is hereby subjected and made liable to the same forfeitures as such minor (a) would be liable to, for a like deficiency, neglect or non-appearance, if such minor were of age; and all persons liable by this act to military duty, shall be allowed six months (b), immediately from and after their arrival at the age of eighteen years, and not afterwards, within which to furnish themselves with the arms and equipments required by law: *Provided however*, That such parents, masters or guardians as shall produce, on or before the first Tuesday of May annually, certificates from the Overseers of the poor of the town or

Parents, masters, &c. to furnish their minors with arms and equipments.

[Ib. § 28.]

Six months allowed for providing arms and equipments.

Proviso respecting those unable to arm and equip.  
[Mass. Stat. Mar. 4, 1800, § 12.]

(a) An infant may be sued for non-appearance at a military muster, and may answer personally as in case of an indictment. *Winslow vs. Hunnewell*, 12 Mass. 271. So he may enlist in a volunteer company. *Com. vs. Frost*, 18 Mass. 491.

(b) See § 15, note j, 1, 2, ante p. 823.



**CH. 164.** district in which they reside, of their inability to provide arms and equipments as aforesaid, to the Commanding officer of the company in which the minor under their care is enrolled, shall be exempted from the forfeitures aforesaid.

No invalid exemptions allowed without surgeon's certificate.

[Ib. § 29.]

[\*717]

Certificates to be countersigned.

**SECT. 35.** *Be it further enacted (c),* That no non-commissioned officer or private of any company shall be exempted from military duty on account of bodily infirmity, unless he shall obtain from the Surgeon or Surgeon's mate of the regiment to which he belongs, if either of those officers are commissioned in such regiments; if not, from some respectable physician, living within the bounds of the same, a certificate\* that he is unable (*d*) to perform military duty on account of bodily infirmity, the nature of which infirmity is to be described in said certificate, and the Commanding officer of the company may, on the back of such certificate, discharge the non-commissioned officer or private, named therein, from performing military duty, for such a term of time, as he shall judge reasonable, not exceeding one year, which certificate (*e*), if approved and countersigned by the Commanding officer of the regiment, or battalion, to which the disabled non-commissioned officer or private belongs, shall entitle him to exemption from military duty for the time specified. And any non-commissioned officer or private,

(*c*) 1. In an action for a penalty incurred by neglect of duty, it is competent for the defendant, at the trial, to show that by reason of *permanent* bodily disability he was not liable to be enrolled as a soldier. *Pitts, Pltf. in error, vs. Weston, 2 Glf. 849.*

2. In such case it is not necessary for the defendant to produce the certificate of the surgeon, nor to offer his excuse within eight days; these regulations apply only to cases of temporary disability. *Ib. Hume vs. Vance, 7 Glf. 158.* See onward, § 45, art. 32, and notes thereto.

(*d*) The certificate of a surgeon in the militia, that a private, "by a wound in his hand, has his thumb and fingers rendered useless thereby, and is unable to perform military exercise," is not necessarily an excuse for the life of the private; but it is competent for a Justice before whom he is sued for a penalty, to enquire whether the disability continues. *Com. vs. Bliss, 9 Mass. 822.* The certificate is not conclusive. *Johnson vs. Morse, 7 Pick. 251.*

(*e*) A private who is excused for a term of time, upon a surgeon's certificate, from performing military duty, on account of bodily infirmity, is not thereby excused from attending at meetings for the choice of company officers. *Smith's case, 8 Pick. 886.*



having obtained a certificate as aforesaid, and who may be refused a discharge, may apply to the Commanding officer of the regiment for further examination of his case, and if on such examination, the Commanding officer of the regiment shall be well satisfied that the bodily infirmity of such non-commissioned officer or private is such that he ought to be discharged, he is hereby authorized to discharge him from military duty for such time as he shall judge reasonable, not exceeding one year, which being certified by the Commanding officer of the regiment on the back of the certificate, shall discharge the non-commissioned officer, or private, from military duty for the time specified by the Commanding officer of the regiment (*f*).

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SECT. 36. *Be it further enacted*, That if any non-commissioned officer or private shall be killed, or die of wounds received when on any military duty required by this act, his widow, child, or children, shall receive from the Legislature such relief as shall be just and reasonable. And if any officer, non-commissioned officer or private, shall be wounded, or otherwise disabled when on such duty, he shall receive from the State just and reasonable relief.

Pensions to be allowed in certain cases of death or wounds, when on duty.

[Ib. § 80.]

[By\* ch. 367, § 11, vol. 8, p. 220, from § 37 to § 44, inclusive, is repealed.

It provided for the organization and proceedings of Courts Martial.

See said ch. 367; also act passed March 9, 1832, § 7 & 8; also act passed March 18, 1838.

They provide a new system of Courts Martial.]

[\*718]

[\*719]

[\*720]

[\*721]

[\*722]

[\*723]

[\*724]

## RULES AND ARTICLES,\*

### GOVERNING THE MILITIA WHEN NOT IN ACTUAL SERVICE.

SECT. 45. *Be it further enacted*, That the following shall be the rules and articles, by which the Militia of this State shall be governed when not in actual service.

Rules, &c. for government of militia when not in actual service.

ARTICLE 1.\* Every commissioned officer who shall be guilty of any unmilitary conduct, neglect of duty, or disobedience of orders, or who shall, when on duty, appear or behave himself in an unofficer-like manner, or who shall wil-

[\*725] Neglect of duty, disobedience of orders, &c.

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(*f*) Such commanding officer has no authority to examine such a case, or to allow a discharge, unless it had been previously refused by his inferior officers. *Com. vs. Smith*, 11 *Mass.* 460. But the Court will presume in case the commanding officer has endorsed such discharge, that a previous application has been made to the inferior officers, unless the contrary appears. *Com. vs. Fanning*, 14 *Mass.* 290.



**CH. 164.** fully oppress or injure any under his command, or who shall at any time set on foot, or join in any combination to resist or evade the lawful orders of any commissioned officer, shall be liable to be tried by a court martial.

**[Mass. Stat. Mar. 6, 1910, § 34].**

**Officer convicted of a crime, to be deprived of command.**

**ART. 2.** If any officer shall in due course of law be convicted of any infamous crime, he shall be forthwith put in arrest, and deprived of all military command, until an opportunity shall be had for both Houses of the Legislature to address the Governor for his removal.

**Manner of arresting officers for trial.**

**ART. 3.** Every officer, to be tried by a court martial, shall be put in arrest, so as to be suspended from the exercise of his office, and shall have a copy of the charges exhibited against him, and notice of the time and place appointed for his trial; which copy and notice shall be given thirty days at least before his trial is commenced.

**Officer not appearing at time for his trial, &c. may be tried as if he had pleaded not guilty.**

**ART. 4.** In case any officer, for the trial of whom a court martial is appointed, shall neglect to appear and make defence, or if appearing shall afterwards withdraw in contempt of the court, or being arraigned before a court martial, shall from obstinacy or deliberate design stand mute, or answer foreign to the purpose, the court may proceed to trial and judgment as if he had regularly pleaded not guilty.

**Penalty for officer arrested presuming to exercise command.**

**ART. 5.** If any officer, after having been put in arrest, shall presume to exercise any military command, until he is discharged from his arrest, he shall be liable to be tried by a court martial, and if convicted, he shall be removed from office.

**No officer to be tried for offences of more than a year previous, unless, &c.**

**ART. 6.** No officer shall be tried by a court martial for any offence which shall have been committed more than one year, previous to the time when a complaint shall have been made in writing therefor, unless he shall have repeated such offence in two or more successive years, or by reason of having absented himself, or some other manifest impediment, shall not have been amenable to justice within that period.

**Captains to call out their companies when required by law, &c.**

**["726]**

**ART. 7.** Every Captain or Commanding officer who shall either neglect or refuse to call out his company as often as, and\* at the times required by this act, or at any other time, when thereto required by his superior officer, or who shall at any time excuse any under his command for unnecessary



absence or deficiency, shall be liable to be tried by court martial. CH. 164.

ART. 8. No officer shall be permitted to resign while under arrest. And no resignation of any officer shall be approved, if such resignation be offered between the first day of May and the first day of November, unless the reasons offered by the officer wishing to resign within those days, be very urgent. No officer to resign while under arrest, nor between May 1, and Nov. 1, unless.

ART. 9. No officer shall be discharged, except by the Commander in Chief, on request of such officer, in writing, or by actual removal of residence, out of the bounds of his command, and to such distance that his Major General shall think it inconvenient for him to discharge the duties of his office, or by twelve months' absence, without leave of the Commanding officer of his division, or by the corps to which he belongs being disbanded by law; and whenever any division, brigade, regiment or battalion shall be divided and the residence of any Staff officer attached thereto, shall be without the bounds of the corps, in which he was commissioned, such Staff officer shall be entitled to an honorable discharge, and shall cease to do duty after such division is made, and the commanding officer of such corps may proceed to fill the vacancy occasioned thereby. No officer to be discharged except by commander in chief, on request, &c. and for reasons.

ART. 10. No officer shall consider himself as exempted from the duties of his station, except when under arrest, until he shall have been discharged by one of the methods or causes pointed out in the preceding article, or shall have received a certificate of his discharge from the Commander in Chief. No officer exempted from duty until discharged, &c. or under arrest.

ART. 11. No general or field officer shall approve a resignation, until the orderly and other books and property of the State, in the possession of the resigning officer are taken care of, for the use of the corps to which such officer belongs, in order that such books and property may be delivered to his successor. Officers resigning to deliver books and State property, in his possession.

ART. 12. The Captain or Commanding officer of every company raised at large, shall annually in the month of April,\* make out a list of the names of the men belonging to his company, and deliver the same to the commanding [\*727] Commanding officers of companies at large to return list of his men in April.



**CH. 164.** officer of the regiment or regiments, within whose bounds such men reside.

Captains, &c. to make return of company to commanding officer of regiment in May annually.

Adjutant to make return to brigadier in June.

[†See § 28, ante, p. 834]

Brigade return to be made to major general in July.

Division return to be made to adjutant general in August or September.

Persons enlisting in volunteer companies holden 7 years.

Brigadier general in certain cases, may dis-

**ART. 13.** Every Captain or Commanding officer of a company shall make a return of the state of his company, comprehending the names of all the men belonging thereto, with all the arms and equipments of the men present at the company inspection, to the Commanding officer of his regiment or battalion, in the month of May, annually(g). Every Commanding officer of a regiment shall cause his Adjutant† to make a return of the state of his regiment to the Commanding officer of the brigade in the month of June, annually. And every Commanding officer of a brigade, shall cause his brigade Inspector to make out a return of his brigade, of which he shall transmit to the Major General of the division to which he belongs, in the month of July, annually. And the Major General shall cause the Division Inspector to transmit a certified copy of such brigade returns to the office of the Adjutant General during the months of August and September, annually.

**ART. 14.** Every person who shall lawfully enlist in any volunteer company, (whether such person be exempted by this act from any military duty or not) shall be holden to do duty therein for the term of seven years, unless such person be sooner discharged by the order of the Commanding officer of the brigade(h).

**ART. 15.** Each Brigadier General or Commanding officer of brigade, within his own brigade, upon application of the

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(g) 1. "A neglect by the colonel of a regiment to make returns of his regiment to the commandant of the brigade, is culpable negligence in the discipline of his regiment." *State vs. Parker, Smith's C. Martial R. p. 112.*

2. "If regular returns of companies have not been made to the colonel, it is not an excuse for his omitting to make to the commandant of the brigade such returns as were within his reach." *Ib.*

(h) 1. "This regulation was undoubtedly intended to limit the time generally, for which persons enlisting into volunteer companies should be holden to serve, and at the same time to authorize the commanding officer of the brigade to discharge them, in case of misconduct or neglect of duty, as well as for any other reasonable cause. But it cannot be supposed, that under this provision of the law, a private in such company is holden at all events for the term of seven years, unless he obtains the discharge of the brigadier general. He may become infirm and unable to do duty, or may remove without the



Commanding officer of any company of artillery, cavalry, light infantry, grenadiers, or riflemen, may discharge any non-commissioned officer or private from any of the aforesaid companies; and such non-commissioned officer or private shall forthwith be enrolled in the standing company, within the bounds of which he resides; and every non-commissioned officer so discharged, shall be considered as reduced to the ranks (i).

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charge pri-  
vates, &c. from  
volunteer corps  
at request of  
captains.

ART. 16. Whenever different corps shall parade, join, or do duty together, the senior officer present, according to rank, shall command, without regard to corps.

Senior officer  
to command  
when different  
corps are join-  
ed.

ART. 17.\* Any officer refusing or neglecting to make a draft or detachment, when ordered in pursuance of the thirtieth section of this act, shall be arrested, and be liable to be

[\*728]  
Penalty for of-  
ficer refusing  
to make draft.

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commonwealth, or out of the limits of the division, to which the company belongs: and in such cases he would be discharged, or at least excused from the performance of duty, while the impediment continued." *Com. vs. Thaxter*, 11 *Mass.* 392. See ante, p. 814, note *t*; and p. 839, note *a*.

2. But this provision cannot be held to apply to those who have removed out of the brigade, within which the company is organized. *Com. vs. Cummings*, 16 *Mass.* 197. See ante, § 19, p. 827, note *m*. But it was held in *Munyan vs. Coburn*, 8 *Pick.* 481, that "An enlistment in a volunteer company of militia is not dissolved by the soldier's removing out of the limits of the regiment to which the company is attached, into the limits of another regiment within the same brigade, and performing duty in a standing company belonging to this last mentioned regiment."

8. No person can lawfully be enlisted into a volunteer company, who does not live within the limits of it. *Com. vs. Cummings*, 16 *Mass.* 197. So a person subject to militia duty, living within the limits of one brigade, cannot lawfully enlist in a volunteer company in another brigade. *Webber*, *pet.* 3 *Pick.* 264.

4. One who has served seven years in a volunteer corps, is *ipso facto*, entitled to his discharge; and after demanding it, is no longer liable to a fine for neglecting to attend a muster of the corps. *Com. vs. Cutter*, 8 *Mass.* 279. But unless he re-enlists he is liable to be enrolled in a standing company. *Howard vs. Harrington*, 4 *Pick.* 123.

(i) A brigadier general may discharge a private from a volunteer company upon the application of the captain of a standing company; and if the private does duty in the standing company, he will not be liable to a fine for non-appearance in the volunteer company, although his discharge should not be duly notified to the captain of such company. *Ex parte, Gallup*, 1 *Pick.* 463.



CH. 164. tried by a court martial, and the officer next in command, shall be ordered to make the draft or detachment.

Cartridges drawn, how to be distributed.

ART. 18. It shall be the duty of each Commanding officer of a company, drawing cartridges in pursuance of the twenty-ninth section of this act, to cause them to be distributed equally among his men on the parade, and to be used in teaching his men precision in their firings. And if any non-commissioned officer or private shall come on to any parade with his musket, rifle or pistol, loaded with ball, slugs or shot, he shall for such offence forfeit not less than *five*, nor more than *twenty* dollars.

Penalty for having gun, &c. on parade loaded with ball, &c.

For parading men on election days.

ART. 19. If any officer, contrary to the provisions of the thirty-second section of this act, shall parade his men on either of the days of election in said section pointed out, he shall be liable to be tried by court martial; and moreover shall forfeit a sum not less than *fifty*, nor more than *three hundred dollars*, to be sued for and recovered in any action on the case, before any Court of competent jurisdiction, one moiety thereof to the use of the person who may prosecute for the same, the other to the use of the State.

Companies in regiment, &c. how to be formed.

ART. 20. At all regimental and battalion parades, the several companies shall form in regiment or battalion, according to the rank of the officers present, actually commanding them; and the same rule shall apply in all cases, excepting those in which artillery, cavalry, light infantry, grenadiers, and riflemen, may by usage and necessity, be detached from the regiments and battalions.

Punishment for disorderly behaviour of privates, &c. when on duty.

ART. 21. Any non-commissioned officer or private, who shall, while under arms, or when on duty, behave himself with contempt to an officer, or shall conduct in a disorderly manner, or excite or join any tumult or riot, or be guilty of any other unmilitary(*j*) conduct, may be put under guard, and so kept for a longer or shorter time, at the discretion of the Commanding officer of the company; not exceeding however, the time which the company, to which he belongs

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(*j*) In a prosecution against one for unmilitary conduct on a muster day, to which he pleaded not guilty, and which was carried to the C. C. Pleas by appeal, if the jury find him guilty, the Court may award the penalty; although on the plea of *nil debet*, the jury might have assessed the penalty. *Com. vs. Stevens*, 15 *Mass.* 195.



is dismissed ; and shall moreover forfeit a sum not less than *five*,\* nor more than *twenty dollars* for each offence, according to the degree and aggravation of the same.

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[\*729]

ART. 22. Any non-commissioned officer or private, who shall without leave of his officer, quit his guard, section, platoon, or company, shall for each offence forfeit not less than *two*, nor more than *ten dollars*.

Fine for quitting platoon, &c. without leave.

ART. 23. Any non-commissioned officer or private, who shall, in going to or returning from, or while on the place of parade, or while under arms, unnecessarily, and without orders discharge his musket, rifle, or pistol, shall forfeit not less than *five*, nor more than *twenty dollars* for each offence (*k*).

Disorderly firing.

ART. 24. Any non-commissioned officer or private, who shall refuse or neglect to give any notice or warning, when ordered thereto by the Commanding officer of the company to which he belongs, shall for such† offence forfeit not less than *one*, nor more than *four dollars*, for each non-commissioned officer or private, which he shall neglect or refuse to warn or notify, to be recovered on indictment in the Circuit Court of Common Pleas, or on complaint before some Justice of the Peace ; one half thereof to the complainant and the other half thereof to the State.

For neglecting to give notice or warning when required.

[†See note *q*, 4, ante p. 830.]

How recovered.

ART. 25. If any non-commissioned officer or private, shall, in due course of law, be convicted of any infamous crime, he shall be forthwith disenrolled from the Militia.

Non-commissioned officer, or private, convicted of infamous crime, to be disenrolled.

ART. 26. Every non-commissioned officer, who shall be guilty of any disobedience of orders, neglect of duty, or other unmilitary conduct, may be reduced to the ranks by the Commanding officer of the regiment to which he belongs, by and with the advice of the Commanding officer of the company to which such non-commissioned officer belongs.

Sergeants, &c. guilty of disobedience, &c. to be reduced.

ART. 27. Every (*l*) non-commissioned officer or private, (excepting those, who by the third section of this act, are permitted to send their arms and equipments on that day for inspection,) who being duly ordered to appear at the compa-

Fine for absence of privates, &c. from inspection in May—

(*k*) Commanding officers at musters are answerable for damage occurring to citizens, from firing guns in or near the highway by the soldiers under their command. But not after a dismissal. *Moody vs. Ward*, 13 *Mass.* 299.

(*l*) See ante, p. 839, note *a*.



**CH. 164.** ny inspection and view of arms on the first Tuesday of May, and shall unnecessarily neglect to appear at the time and place appointed, shall forfeit *two dollars and fifty cents (m)*.

for absence  
from company  
training—

[\*730]  
[†See note m,  
to art. 27.]

from regimen-  
tal muster, &c.

**ART. 28.** Every non-commissioned officer or private, who, being duly ordered, shall unnecessarily neglect to appear at\* any company training, at the time and place appointed, shall forfeit *one dollar and fifty cents.†*

**ART. 29.** Every non-commissioned officer or private, who being duly ordered, shall unnecessarily neglect to appear, for any battalion, regimental, or brigade inspection or review, at the time and place appointed, shall forfeit *three dollars*. And in no case in time of peace shall any substitute be received.†

[†See note m,  
to art. 27.]

for deficiencies  
of arms, and  
equipments at  
May inspec-  
tion.

**ART. 30.** Every non-commissioned officer or private, who shall appear at the company inspection, on the first Tuesday in May, or at any company training, or for any battalion, regimental, or brigade inspection or review, and shall not be armed and equipped as the law directs, shall for each article, in which he is deficient,† or which shall be of bad quality, or in bad condition, forfeit as follows: if deficient of a good musket, bright and in good order, of a bore sufficient for balls of the eighteenth part of a pound, sufficient bayonet and belt, and iron or steel ramrod; all which articles are to be considered as one, and a deficiency in either shall be considered a deficiency in the whole, he shall forfeit *one dollar*; if deficient of a cartridge box, containing twenty-four cartridges (n) suited to the bore of his musket, and each car-

[†See note m,  
to art. 27.]

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(m) 1. It is provided by ch. 819, § 1, “That if any non-commissioned officer or private shall neglect to attend any company inspection and drill provided for in this act, he shall forfeit the sum of four dollars; for neglect to attend any brigade, regimental or battalion review, or any company training provided for in this act, he shall forfeit the sum of three dollars; and for being deficient in the arms and equipments or any part thereof required by law, he shall forfeit and pay double the amount provided for such deficiency, in the acts to which this is in addition, to be recovered and applied as therein provided.”

2. Written notifications, made out by one to whom orders are issued to warn a company, though served by any other person, even by one not belonging to the company, will be sufficient notice. *Com. vs. Cutter, 8 Mass. 279.* See notes, ante p: 880.

(n) See note f, ante p. 805.



tridge containing a proper quantity of good powder and ball, or if deficient of a serviceable knapsack, he shall forfeit *thirty cents*; if deficient of two spare flints and priming wire and brush, or either of them, he shall forfeit *twenty cents*; *Provided nevertheless*, That none of the above forfeitures shall be incurred by any private, in case he appears with a good rifle, knapsack, shot pouch, powder horn, a quarter of a pound of powder, and twenty balls suited to the bore of his rifle: *Provided moreover*, That cartridges, with ball, shall not be brought into the field, except at the company inspection on the first Tuesday in May, and knapsacks may be dispensed with at the company trainings.

ART. 31. If any non-commissioned officer or private of any company of artillery, cavalry, light infantry, grenadiers, or riflemen, shall appear on any of the occasions mentioned in the preceding article, without the uniform (o) of the company to which he belongs, he shall forfeit *one dollar and fifty cents*.†

Fine for not wearing uniform of the company.

[†See note m, to art. 27.]

ART. 32.\* All excuses for non-appearance of non-commissioned officers and privates, must be made within eight (p) days of any training, view of arms, or other military duty, to the Commanding officers of their respective companies; and on the delinquent's producing or causing to be produced satisfactory (q) evidence of his inability to appear, his Commanding

[\*731] Excuses for absence, &c. to be made within 8 days.

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(o) A soldier in the militia at a muster for inspection of arms, &c. exhibited an equipment as his own, which he had borrowed of another soldier at the same muster, and was returned by the inspecting officer as duly equipped; the owner also exhibited the same, and was returned as duly equipped; it was held that the first soldier was liable to the penalty for the deficiency of such equipment, notwithstanding the return of the officer. *Com. vs. Bullard*, 9 Mass. 270. See note x, ante p. 815.

(p) It is provided by ch. 819, § 3, vol. 3, p. 164, "That all excuses of non-commissioned officers and privates for neglect of duty, shall be made to the commanding officer of the company within twenty days after such neglect; and all prosecutions for the recovery of any fine or forfeiture, shall be commenced within forty days from the time the forfeiture accrued; and no clerk shall be compelled to commence a prosecution against any delinquent who in the opinion of the major part of the commissioned officers of the company is unable to pay the fine or forfeiture incurred by him." See § 12, note i, ante p. 822. See *Sherman vs. Needham*, 4 Pick. 66.

(q) From this provision "it is very clear that a certificate of the surgeon of a regiment, of the inability of any non-commissioned officer or private, is not



**CH. 164.** officer may excuse him; but all Commanding officers of companies are hereby forbidden from receiving any excuse, for non-appearance, under any pretence whatever, after the expiration of the eight days allowed. And any such non-commissioned officer or private, who shall neglect to give or cause to be given, to his Commanding officer, such satisfactory evidence of his inability to appear, (*Provided*, he is not prevented therefrom by severe sickness) (*q*), within the said eight days, shall forfeit and pay the penalty by law provided for such non-appearance. And all Commanding officers of companies are prohibited (*r*) from receiving any excuses from their men, for any deficiency or deficiencies of equipments, and Commanding officers of companies shall inform, or cause their clerks to be informed, of all the excuses for non-appearances which they may allow as good and sufficient (*s*).

No excuse allowed for defect of equipments.

Fine for absence from meeting for choice of officers.

**ART. 33.** Any non-commissioned officer or private, being a legal voter of a company, who after being duly notified, shall unnecessarily neglect to appear at any meeting for the choice of any officer or officers of the company to which he belongs, he shall for every such neglect, forfeit *one dollar*.

Surgeons, &c. prohibited from taking fee for certificates of disability.

**ART. 34.** All Surgeons and Surgeons' mates are prohibited from taking any fee or gratuity whatever, under any pretence whatsoever, from any man to whom they may give a certificate of inability to perform military duty on account of bodily infirmity. And it shall be their duty critically to examine the case of any applicant for such certificate, and not to grant a certificate unless the infirmity or disability be such, beyond all doubt, as to render him unable to perform military

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to be received as conclusive evidence. If such certificate be produced to the commanding officer, he may excuse, but is not obliged to do it, if the evidence of the fact is not satisfactory to him. *Johnson vs. Morse*, 7 Pick. 252.

(*q*) By severe sickness is intended such sickness as prevents the party from giving to his commanding officer *within eight days*, satisfactory evidence of his inability to appear. *Tribou vs. Reynolds*, 1 Glf. 409.

(*r*) By ch. 319, § 12, vol. 3, p. 166, so much of the above act as prohibits the commanding officers of companies from receiving any excuses from their men, for deficiency of equipments, is repealed.

(*s*) 1. The provision of art. 32 does not apply to one who, though he may have been notified in a manner prescribed by law, yet had no *actual* notice to appear, and who, of course, could not know that he was under any legal



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duty. And if any Surgeon or Surgeon's mate, shall in violation of this article, take any fee or gratuity, or if any Surgeon or Physician not commissioned as Surgeon or Surgeon's mate, shall without good and sufficient cause, grant such certificate in violation of this article, he shall, for every such\* offence, forfeit and pay not less than *twenty*, nor more than *one hundred dollars*, to be recovered by indictment in the Circuit Court of Common Pleas; one half thereof to the complainant and the other half to the State.

Penalty and  
how recovered.  
[\*732]

ART. 35. The Aid-de-Camp to each Major General, by him appointed orderly officer; the Aid-de-Camp of each brigade, and the Adjutant of each regiment, battalion, or corps, shall constantly keep a correct roster of the division, brigade, regiment, battalion, or corps, to which they respectively belong; and an orderly book, and record therein all orders and other official communications, received or issued by their respective commanding officers, and copy, distribute, and transmit, all such orders and other papers, as they may be directed by said officers, and attend them while on the performance of military duty.

Rosters and  
orderly books  
to be kept in  
each division,  
brigade, regi-  
ment, &c. and  
by whom.

ART. 36. Every Sergeant Major, Quarter Master Sergeant, Drum major or Fife major, who shall be guilty of neglect or disobedience of the orders of the Commanding officer of their respective regiments or battalions, shall, for each offence, forfeit not less than five dollars, nor more than twenty dollars, to be recovered by the Adjutants of their respective regiments or battalions, on complaint, in the same manner, that fines are recovered by clerks of companies; one half thereof to said Adjutant, for his own use, and the other half to be expended by him, under the direction of the field officers, in the repair of the regimental and battalion colours, and of the musical instruments furnished by the State for the use of the companies of his said regiment or battalion, and the purchase of camp colours. And every such non-

Fines for neg-  
lect or disobe-  
dience of regi-  
mental staff of-  
ficers, non-  
commissioned.

How recovered  
and disposed  
of.

obligation to offer an excuse, nor that he had been guilty of any neglect, which required one. *Cutter, Pltf. in error vs. Tole*, 2 Glf. 181.

2. In case of *permanent* bodily disability the defendant need not produce the certificate of the surgeon, nor offer his excuse within *eight* days. *Com. vs. Fitz*, 11 Mass. 540. *Pitts, Pltf. in error vs. Weston*, 2 Glf. 349. *Hume vs. Vance*, 7 Glf. 158. See notes to § 85, ante p. 840.



## CH. 164.

Such staff  
officers may be  
reduced, &c.

Rules to be  
read to each  
company 1st  
Tuesday of  
May.  
Fines, &c.  
how recovered.  
[\*733]

Limitation of  
prosecutions.

[†See art. 82,  
note p, ante p.  
849.]

Clerk may a-  
mend his writ,  
in any stage.  
[1b. § 86.]

Clerk not lia-  
ble to costs in  
case.

No appeal  
from judgment  
of Justice for  
10 dollars and  
less.

Appropriation  
of fines collect-  
ed by clerks of  
companies.

commissioned officer, who shall be guilty of any disobedience of orders, neglect of duty, or other unmilitary conduct, may be reduced to the ranks by their Brigadier General, by and with the advice of the Commanding officer of the regiment or battalion to which such non-commissioned officer may belong.

ART. 37. These rules and articles shall be read at the head of each company on the first Tuesday of May annually.

SECT. 46. *Be it further enacted*, That all fines and forfeitures incurred by non-commissioned officers and privates under\* the provisions of this act, the recovery of which, and the mode of the recovery of which, are not in and by this act otherwise provided for, shall be prosecuted for and recovered by the respective clerks of the companies to which such non-commissioned officer or officers, private or privates, incurring any fine or forfeiture, as aforesaid, belong, in an action of debt (†), before any court proper to try the same.

And such action shall not be commenced till after eight days, and shall be commenced within thirty days,† after the day of any parade of any company to which such clerk belongs.

And it shall be lawful for any clerk in such action, to amend his writ in any stage of the process before the rendition of final judgment therein, without paying costs. And no clerk shall be liable to pay any defendant costs, in any case in which the Commanding officer of the company has endorsed his approval on the writ of such clerk. And no appeal (u) shall be allowed from any judgment of a Justice of the Peace, when the forfeiture by him adjudged does not exceed ten dollars, exclusive of costs.

SECT. 47. *Be it further enacted*, That the Clerk of each company shall retain to his own use, one fourth part of all fines and forfeitures collected or recovered by him, and the residue he shall faithfully pay over to the Commanding officer of the company, on demand; and the Commanding

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(†) One committed to prison on a judgment against him for a penalty incurred under the act for regulating the militia, is entitled to the benefit of the act for the relief of poor prisoners. *Dyer vs. Hunnewell*, 12 Mass. 271.

(u) This provision does not contravene the article in the constitution, securing a trial by a jury. *Mountfort vs. Hall*, 1 Mass. 452.



officer of the company shall give his receipt to the Clerk for all money paid over to him as aforesaid. And it shall be the duty of every Commanding officer of a company to expend such part of the money paid him by the Clerk as may be necessary for defraying such company expenses, as a majority of the commissioned officers of the company shall judge to be necessary.

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[Ib. § 87.]

SECT. 48. *Be it further enacted*, That the Adjutant General and the Quarter Master General (v) shall receive compensation for their services, to be allowed by the Legislature.

Compensation.  
[Ib. § 88.]

SECT. 49. *Be it further enacted*, That the following shall be the annual allowance to the officers hereinafter named, as a full compensation for all the services they may render in the official discharge of their duties respectively :

To the Aid-de-Camp acting as orderly officer to the Major General of each division, fifty dollars ; to the Brigade Inspector\* of each brigade, twenty dollars ; to the Brigade Quarter Master (w) of each brigade, ten dollars ; to the Aid-de-Camp of each Brigadier General, twenty dollars ; to the Adjutant of each regiment, twenty-five dollars ; to the Adjutant of each battalion of cavalry or artillery, fifteen dollars ; to the Quarter Master of each regiment, ten dollars : *Provided*, 'The said officers shall promptly and faithfully perform the duties belonging to them, respectively.

Compensation  
of commissioned  
staff officers.  
[\*734]

SECT. 50. *Be it further enacted*, That it shall be incumbent on all officers and non-commissioned officers, whose duties are not herein fully defined, to do and perform all such duties as by law and military principles and usage are attached to their offices respectively : *Provided*, Such duties shall be required of them by their senior and proper Commanding officer.

Duties of cer-  
tain militia of-  
ficers.

SECT. 51. *Be it further enacted*, That the Adjutant General is hereby authorized to issue blank forms, to be uniform throughout the State, for the use of the officers of the Militia, and for the auditing of military accounts of every description.

Adjutant gen-  
eral to issue  
blank forms for  
the use of the  
militia.

(v) See Resolve passed April 1, 1881, ch. 87.

(w) See note v, § 27, ante, p. 834.



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New divisions,  
how numbered  
and rank.

[SECT. 52, repealed; see ch. 240, § 8, vol. 3, p. 71.  
It provided for the distribution of copies of Infantry exercise and manoeuvres.]

SECT. 53. *Be it further enacted*, That every new division shall be designated by the number, next higher than that of the division established next before it, and the divisions shall take rank according to the numbers by which they are severally designated, the first being highest in rank.

RULES AND ARTICLES

*For governing the Troops stationed in Forts and Garrisons, within this State; and also the Militia, or any part thereof, when called into actual service.*

Rules and ar-  
ticles for gov-  
erning militia,  
&c. in actual  
service.

SECT. 54. *Be it further enacted*, That the following rules and articles, be, and they hereby are, established, and declared to be in force, for governing all troops stationed in forts and garrisons within this State; and also the Militia, or any part thereof, when called into actual service, viz.

Officers and  
soldiers to at-  
tend divine  
service.  
[\*735]

ARTICLE 1. All officers and soldiers shall diligently attend divine service; all officers and soldiers who shall unnecessarily\* absent themselves from or behave indecently or irreverently at any place of divine worship, shall, if commissioned officers, be brought before a general court martial, there to be publicly and severely reprimanded by the President; if non-commissioned officers or soldiers, every person so offending, shall for the first offence, forfeit twenty cents, to be deducted out of his next pay; for the second offence he shall not only forfeit a like sum, but be confined twenty-four hours; and for every like offence, shall suffer and pay in like manner; which money so forfeited, shall be applied to the use of the sick soldiers of the troop or company to which the offender belongs.

Forfeitures for  
neglect.

Punishment  
for profane  
oaths.

ART. 2. Whatsoever non-commissioned officer or soldier shall use any profane oath or execration, shall incur the penalties expressed in the foregoing article; and if a commissioned officer be thus guilty of profane cursing or swearing, he shall forfeit and pay, for each and every such offence, sixty-seven cents.

for traitorous  
or disrespectful  
words—

ART. 3. Whatsoever officer or soldier shall presume to use traitorous or disrespectful words, against the authority of the United States, in Congress assembled, or the Legislature of this State; if a commissioned officer, he shall be cashier-



ed; if a non-commissioned officer or soldier, he shall suffer such punishment as shall be inflicted upon him by the sentence of a court martial. CH. 164.

ART. 4. Any officer or soldier who shall behave himself with contempt or disrespect towards the Commander in Chief, or any General or Commanding officer of the troops or Militia of this State, or shall speak words tending to his hurt or dishonor, shall be punished according to the nature of his offence, by the judgment of a court martial. for contempt, &c. against commanders.

ART. 5. Any officer or soldier who shall begin, excite, cause or join in any mutiny or sedition, in the troop, company or regiment to which he belongs, or in any other troop or company in the service of this State, or in any party, post, detachment or guard, on any pretence whatsoever, shall suffer such punishment as by a court martial shall be inflicted. for mutiny—

ART. 6. Any officer, non-commissioned officer or soldier, who, being present at any mutiny or sedition, doth not use his\* utmost endeavors to suppress the same; or coming to the knowledge of any intended mutiny, doth not without delay give information thereof to his Commanding officer, shall be punished by sentence of a court martial, according to the nature of his offence. for not using endeavours to suppress mutiny—  
[\*736]

ART. 7. Any officer or soldier who shall strike his superior officer, or draw or lift up any weapon, or offer any violence against him, being in the execution of his office, on any pretence whatsoever, or shall disobey any lawful command of his superior officer, shall suffer such punishment as shall, according to the nature of his offence, be inflicted upon him by the sentence of a court martial. for striking or offering violence to superior officer.

ART. 8. Any non-commissioned officer or soldier, who shall desert, or, without leave from his Commanding officer, absent himself from the troop or company to which he belongs, or from any detachment of the same, shall, upon conviction thereof, suffer death, or such other punishment as shall be inflicted by the sentence of a general court martial. Desertion.

ART. 9. Whatever officer or soldier shall be convicted of having advised or persuaded any other officer or soldier to desert, shall suffer such punishment as shall be inflicted by the sentence of a court martial. Punishment for persuading others to desert—



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for provoking  
speeches or  
challenges—

for officers suf-  
fering others to  
fight duels.

Officers to  
quell all quar-  
rels, disorders,  
&c.

Punishment for  
resistance.

[\*737]

for upbraiding  
another for re-  
fusing a chal-  
lenge.

Officers to  
keep good or-  
der and re-  
dress abuses.

ART. 10. No officer or soldier shall use any reproachful or provoking speeches or gestures to another; nor shall any officer or soldier presume to send a challenge to any person to fight a duel, upon pain, if a commissioned officer, of being cashiered; if a non-commissioned officer or soldier, of suffering corporal punishment, at the discretion of a court martial.

ART. 11. If any commissioned or non-commissioned officer commanding a guard, shall knowingly and willingly suffer any person whatsoever to go forth to fight a duel, he shall be punished as a challenger; and likewise all seconds, promoters and carriers of challenges, in order to duels, shall be deemed as principals, and be punished accordingly.

ART. 12. All officers of what condition soever shall have power to part and quell all quarrels, frays and disorders, though the persons concerned should belong to another regiment, troop or company; and either to order officers into arrest, or non-commissioned officers or soldiers to prison, until their proper superior officers shall be acquainted therewith; and whosoever\* shall refuse to obey such officer, (though of an inferior rank) or shall draw his sword upon him, shall be punished at the discretion of a general court martial.

ART. 13. Whatsoever officer or soldier shall upbraid another for refusing a challenge, shall be considered as a challenger, and punished accordingly.

ART. 14. Every officer commanding in quarters, garrisons, or on a march, shall keep good order, and to the utmost of his power redress all such abuses or disorders as may be committed by any officer or soldier under his command; and if, upon complaint made to him of officers or soldiers beating or otherwise ill treating any person, or of committing any kind of riots to the disquieting the good citizens of this or either of the United States, he shall refuse or omit to see justice done on the offender or offenders, and reparation made to the party or parties injured, so far as the offender's pay shall enable him or them, he shall, upon proof thereof, be punished by a general court martial, as if he himself had committed the crimes or disorders complained of.

ART. 15. If any officer shall think himself to be wronged



by his Colonel, or the Commanding officer of his regiment, and shall, upon due application made to him, be refused to be redressed, he may complain to the General or Commander in Chief of the forces in service, in order to obtain justice, who shall examine into the complaint and see that justice be done.

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Officer wronged by his colonel may complain to general.

ART. 16. If any inferior officer or soldier shall think himself wronged by his Captain, or other officer commanding the troop or company to which he belongs, he may complain thereof to the Commanding officer of the regiment, who shall summon a regimental court martial, for the doing justice to the complainant; from which regimental court martial either party if he thinks himself still aggrieved, may appeal to a general court martial. But if, upon a second hearing, the appeal shall appear to be vexatious and groundless, the person so appealing shall be punished at the discretion of the said general court martial.

Subaltern or soldier may complain to the colonel against his captain.

ART. 17. Whatsoever non-commissioned officer or soldier shall be convicted at a court martial of having sold, or designedly, or through neglect, wasted the ammunition delivered out to him to be employed in the service of this State, shall, if a non-commissioned\* officer, be reduced to a private, and if a soldier, shall suffer such punishment as shall be inflicted upon him by a court martial.

Punishment for wasting ammunition—

[\*738]

ART. 18. All non-commissioned officers and soldiers who shall be found one mile from the camp without leave, in writing, from their commanding officer, shall suffer such punishment as shall be inflicted on them by the sentence of a court martial.

for being found one mile from camp without leave—

ART. 19. No officer or soldier shall be out of his quarters or camp, without leave from his Commanding officer, upon penalty of being punished according to the nature of his offence, by the sentence of a court martial.

for being out of quarters or camp without leave.

ART. 20. Every non-commissioned officer and soldier shall retire to his quarters or tent, at the beating of the tattoo, in default of which he shall be punished according to the nature of his offence, by the sentence of a court martial.

Soldiers to retire to their quarters at the beating of the retreat.

ART. 21. No officer, non-commissioned officer or soldier shall fail to repair, at the time fixed, to the place of parade

Officers and soldiers to



## CH. 164.

pair to parade  
at time fixed.

or exercise, or other rendezvous, appointed by his Commanding officer, if not prevented by sickness or some other evident necessity; nor shall go from the said place of rendezvous or from the guard, without leave from his Commanding officer, before he shall be regularly dismissed or relieved, on the penalty of being punished according to the nature of his offence, by the sentence of a court martial.

Punishment for  
being found  
drunk on  
guard or duty;

ART. 22. Whatsoever commissioned officer shall be found drunk on his guard, party or other duty, under arms, shall be cashiered for it; and any non-commissioned officer or soldier, so offending, shall suffer such punishment as shall be inflicted by the sentence of a court martial.

for sentinels  
sleeping on  
their posts.

ART. 23. Whatsoever sentinel shall be found sleeping upon his post, or shall leave it before he shall be regularly relieved, shall suffer such punishment as shall be inflicted by the sentence of a general court martial.

Punishment for  
occasioning  
false alarms—

ART. 24. Any person belonging to the forces employed in the service of this State, who, by discharging of fire arms, drawing of swords, beating of drums, or by any other means whatsoever, shall occasion false alarms in camp, garrison, or quarters, shall suffer such punishment as shall be ordered by the sentence of a general court martial.

[\*739]

for quitting  
platoons, &c.

ART. 25.\* Any officer or soldier, who shall, without urgent necessity or without the leave of his superior officer, quit his platoon or division, shall be punished according to the nature of his offence, by the sentence of a court martial.

for insults, &c.  
to persons  
bringing pro-  
visions, &c.

ART. 26. No officer or soldier shall do violence or offer any insult or abuse to any person who shall bring provisions or other necessaries to the camp, garrison, or quarters, of the forces of this State, on pain of suffering such punishment as a court martial shall direct.

for abandoning  
post, &c. du-  
ring engage-  
ment—

ART. 27. Whatsoever officer or soldier shall abandon any post committed to his charge, or shall speak words inducing others to do the like, in time of an engagement, shall suffer death, or such other punishment as shall be inflicted by the sentence of a general court martial.

for divulging  
watch word,  
&c.

ART. 28. Any person belonging to the forces in the service of this State who shall make known the watch word to any person not entitled to receive it according to the rules



and discipline of war, or shall presume to give the parole or watch word different from what he received, shall suffer death, or such other punishment as shall be ordered by the sentence of a general court martial. CH. 164.

ART. 29. Whosoever belonging to the forces in the service of this State shall relieve the enemy with money, victuals or ammunition; or shall knowingly harbour and protect an enemy, shall suffer such punishment as by the sentence of a court martial shall be inflicted. for relieving the enemy with money, &c.

ART. 30. Whosoever belonging to the Maine forces shall be convicted of holding correspondence with, or giving intelligence to the enemy, either directly or indirectly, shall suffer such punishment as by the sentence of a court martial shall be inflicted. for corresponding with enemy.

ART. 31. All public stores taken from the enemy by the forces in the service of this State, shall be secured for the use of the State. Public stores taken, to be for the use of the State.

ART. 32. If any officer or soldier shall leave his post or colors to go in search of plunder, he shall, upon conviction thereof, before a general court martial, suffer such punishment as by the sentence of the said court martial shall be inflicted. Punishment for leaving post in search of plunder—

ART. 33.\* If any commander of any garrison, fortress or post shall be compelled, by the officers or soldiers under his command, to give up to the enemy or to abandon it, the commissioned officers, non-commissioned officers or soldiers, who shall be convicted of having so offended, shall suffer death, or such other punishment as shall be inflicted upon them by the sentence of a court martial. [\*740] for soldiers' compelling their officers to abandon post to the enemy.

ART. 34. All sutlers and retailers to the camp, and all persons serving with the troops of the State in the field, shall be subject to orders according to the rules and discipline of war. Sutlers and retailers, &c. subject to orders, &c.

ART. 35. If, upon marches, guards or in quarters, different corps shall happen to join or do duty together, the eldest officer by commission there on duty, or in quarters, shall command the whole, and give out orders for what is needful for the service, regard being always had to the several ranks of those corps, and the posts they usually occupy. When different corps are joined, eldest officer to command.



## CH. 164.

Different corps of troops quartered or marching together, to be commanded by senior officer without regard to corps.

General court martial how organized as to numbers, &c.

Rank of officers.

Prosecutor in behalf of State, to administer oath to members.

Form of oath.

[\*741]

Prosecutor to be sworn.

Form of his oath.

Mode of giving votes.

Witnesses.

**ART. 36.** If any regiments, troops or detachments of horse or foot shall happen to march with, or be encamped or quartered with, any bodies or detachments of other troops, the eldest officer, without respect to corps, shall take upon him the command of the whole, and give the necessary orders to the service.

**ART. 37.** A general court martial shall not consist of less than thirteen commissioned officers, and the President of such court martial shall not be the Commander in Chief, nor Commanding officer of the troops in service or garrison, where the offender shall be tried, nor under the degree of a Field officer.

**ART. 38.** The members of courts martial, shall, when belonging to different corps, take rank as is herein before directed when on other duty.

**ART. 39.** Some person shall be appointed by the Commanding officer, who shall order the court martial to prosecute in the name of the State of Maine; and in trials of offenders, such person shall administer to each member the following oath:

You swear, that you will well and truly try and determine, according to your evidence, the matter now before you, between the State of Maine and the prisoner to be tried; that you will duly administer justice according to the rules and articles\* for governing the troops of the said State without partiality, favour or affection; and if any doubt shall arise which is not explained by the said articles, according to your conscience, the best of your understanding, and the custom of war in like cases; that you will not divulge the sentence of the court until it shall be approved of by the commanding officer; and that you will not, upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence as a witness by a court of justice, in a due course of law. *So help you GOD.*

Which oath being administered to the members of the court, the President shall administer the following oath to the person prosecuting as aforesaid.

You, A B, do swear, that you will not, upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence thereof as a witness, by a court of justice, in a due course of law. *So help you GOD.*

**ART. 40.** All the members of a court martial are to behave with calmness and decency; and in the giving their votes, are to begin with the youngest in commission.

**ART. 41.** All persons who give evidence before a court



martial, shall be examined upon oath, which oath shall be administered by the President of the court martial, in the form following : CH. 164.

You swear, the evidence you shall give in the cause now in hearing, shall be the truth, the whole truth, and nothing but the truth. *So help you GOD.* Form of oath.

ART. 42. No sentence of death shall be given against any offender by any general court martial, unless two thirds of the members shall concur therein. Two thirds to agree when sentence of death is given.

ART. 43. All persons called to give evidence in any cause before a court martial who shall refuse to give evidence, shall be punished for such refusal at the discretion of such court martial. Punishment of witnesses refusing to testify.

ART. 44. No field officer shall be tried by any person under the degree of a Captain ; nor shall any proceedings or trials be carried on excepting between the hours of sun-rise and sunset. Trials how carried on.

ART. 45.\* No sentence of a court martial shall be put in execution, until after report shall be made to the Commanding officer where the court martial shall be held, and his orders to be issued for carrying such sentence into execution. [\*742] Sentences to be reported to the commanding officer.

ART. 46. The commissioned officers in any regiment, may, by the appointment of their Colonel or Commanding officer, hold regimental courts martial for the inquiring into such disputes or criminal matters as may come before them, and for inflicting corporal punishment for small offences, and shall give judgment by the majority of voices ; but no sentence shall be executed till the Commanding officer (not being a member of the court martial) shall have confirmed the same. Regimental courts martial,

ART. 47. No regimental court martial shall consist of less than five officers, excepting in cases where that number cannot be conveniently assembled, when three may be sufficient ; who shall likewise determine upon the sentence by the majority of voices. to consist of, not less than 5 officers.

ART. 48. Any officer commanding in a fort, castle, barrack or elsewhere, where the corps under his command consists of detachments from different regiments, or of any independent company or companies, may assemble courts martial for the trial of offenders in the same manner as if they Commanders of forts, &c. may order courts martial.



**CH. 164.** were regimental, whose sentence shall not be executed until it shall be confirmed by the said Commanding officer.

Penalty for disturbing courts martial.

**ART. 49.** No person whatsoever shall use menacing words, signs or gestures in the presence of a court martial then sitting, or shall cause any disorder or riot so as to disturb their proceedings, on the penalty of being punished at the discretion of the said court martial.

Offenders, how proceeded with previous to trial.

**ART. 50.** To the end that offenders may be brought to justice, whenever any officer or soldier shall commit a crime deserving punishment, he shall, by his Commanding officer, if an officer, be put in arrest; if a non-commissioned officer or soldier, be imprisoned until he shall be either tried by a court martial, or shall be lawfully discharged by proper authority.

Not to continue in confinement more than 8 days, &c.  
[\*743]

**ART. 51.** No officer or soldier who shall be put in arrest or imprisonment, shall continue in his confinement more than\* eight days, or until such time as a court martial can be conveniently assembled.

Account of the crime charged to be given in writing at the time of commitment.

**ART. 52.** No officer commanding a guard or provost martial, shall refuse to receive or keep any prisoner committed to his charge by any officer belonging to the forces of this State; which officer, shall, at the time of commitment, deliver an account, in writing, signed by himself, of the crime with which the prisoner is charged.

Punishment for releasing prisoner without authority.

**ART. 53.** No officer commanding a guard or provost martial, shall presume to release any prisoner committed to his charge, without proper authority for so doing, nor shall he suffer any prisoner to escape, on the penalty of being punished for it by the sentence of a court martial.

Provost martial, &c. required to give to commanding officer, list of prisoners, and charges, &c. against them.

**ART. 54.** Every officer or provost martial to whose charge prisoners shall be committed, is hereby required, within twenty-four hours after such commitment, or as soon as he shall be released from his guard, to give, in writing, to the Colonel of the regiment to which the prisoner belongs (where the prisoner is confined upon the guard belonging to the said regiment and his offence only relates to the neglect of duty in his own corps) or to the Commander in Chief, their names, their crimes, and the names of the officers who com-



mitted them, on the penalty of his being punished for his disobedience or neglect, at the discretion of a court martial. CH. 164.

ART. 55. If any officer under arrest, shall leave his confinement before he shall be set at liberty by the officer who confined him, or by a superior power, he shall be cashiered for such his offence. Officers arrested leaving confinement to be cashiered.

ART. 56. Whatsoever commissioned officer shall be convicted before a general court martial of behaving in a scandalous, infamous manner, such as is unbecoming the character of an officer and a gentleman, shall be discharged from the service. Officers convicted of scandalous behaviour, &c. to be discharged.

ART. 57. All officers, conductors, gunners, matrosses, drivers, or any other person whatsoever, receiving pay or hire in the service of the State artillery, shall be governed by the aforesaid rules and articles; and shall be subject to be tried by courts martial in like manner with other officers and soldiers. Artillery officers, matrosses, drivers, &c. to be subject to these rules.

ART. 58.\* For differences arising amongst themselves, or in matters relating to their own corps, the courts martial may be composed of their own officers; but where a sufficient number cannot be assembled, or in matters wherein their corps are interested, the officers of artillery shall sit in courts martial with the officers of other corps. [\*744]  
Courts martial may consist of their own officers in certain cases.

ART. 59. No person shall be sentenced to suffer death, except in the cases expressly mentioned in the foregoing articles. No sentence of death to be passed except in cases expressed.

ART. 60. The field officers of each and every regiment shall appoint some suitable person belonging to such regiment to receive such fines as may arise within the same for any breach of any of the foregoing articles; and shall direct the same to be properly applied to the relief of such sick, or necessitous soldiers as belong to such regiment; and such person shall account with such officer for all fines received and the application thereof. Field officers to appoint persons to receive fines, &c.

ART. 61. All crimes not capital, and all disorders and neglects, which officers and soldiers may be guilty of to the prejudice of good order and military discipline, though not mentioned in the foregoing articles, are to be taken cognizance of by a general or regimental court martial, according Crimes, not capital, not mentioned herein, may be taken cognizance of.



CH. 165. to the nature and degree of the offence, and be punished at their discretion.

Officer or soldier accused of a crime against State laws, &c.

to be delivered over to the civil magistrate.

ART. 62. Whenever any officer or soldier shall be accused of a capital crime, or having used violence or committed any offence against the person or property of the good people of this or either of the United States, such as is punishable by the known laws of the land, the Commanding officer and officers of every regiment, troop or party to which the person or persons so accused shall belong, are hereby required, upon application duly made by or in behalf of the party or parties injured, to use his utmost endeavors to deliver over such accused person or persons to the Civil Magistrate, and likewise to be aiding and assisting the officers of justice in apprehending and securing the person or persons so accused, in order to bring them to trial. And if any Commanding officer or officers shall wilfully neglect or shall refuse, upon the application aforesaid, to deliver over such accused person or persons to the Civil Magistrate, or to be aiding and assisting the\* officers of justice in apprehending such person or persons, such officer or officers, so offending, shall be cashiered.

[\*745]

Former laws repealed.

SECT. 55. *Be it further enacted*, That all laws in force in this State, inconsistent with the provisions of this act, be and the same hereby are repealed. [Approved March 21, 1821.]

Additional Act, ch. 240, vol. 3. p. 70.

[1. The provision of § 46, ante p. 852, relative to the exemption of company clerks from costs, extends to the costs in all subsequent stages of the proceedings, as well as to those accruing in the Justice's court. *Winslow vs. Prince*, 5 Glf. 264.

2. Whether the clerk need indorse the writ with his own name, *Quere*. *Abbot vs Crawford*, 6 Glf. 214.]

## Chapter 165.

AN ACT providing for the security of the Treasury of this State.

SECT. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled*, That every person,

Treasurer to give bond.



chosen to the office of Treasurer (a) of this State, shall give the bond, which by the Constitution is required, to the State of Maine, in the penal sum of not less than seventy-five thousand dollars, with at least six good and sufficient sureties residing within this State. The condition of which bond among other things, shall be for the faithful performance and discharge of all the duties of his said office, and for the fidelity of all persons by him employed and entrusted with any of the concerns of such office, and that during his continuance in office, he will not engage in any business of trade or commerce, or as a broker, nor as an agent or factor for any merchant or trader, and that he, or his executors or administrators, or sureties, or their respective executors or administrators shall, and will render a just and true account of all his and his agents' and servants' doings and transactions in said office to the Legislature, or such committee as they shall appoint, on the first Wednesday of January annually, and previous to a new Treasurer's being chosen, and at any other time that shall be required by the Legislature, or the Governor and Council; and that he will settle and adjust said account, and faithfully and without delay deliver over to his successor in office, or such person or persons as by the Legislature shall be appointed for that purpose, all and singular the monies, books, property and appurtenances of said office being and remaining in his hands, or in the hands of his agents or servants, and truly and without delay to pay over all such balances that shall appear due upon the adjustment of the accounts\* of his said office; which bond when executed and approved, as by said Constitution is provided, shall be lodged in the Secretary's office. And the Attorney General, upon order of the Governor and Council, or of the Senate and House of Representatives shall and may, in behalf and for the use of said State, commence an action or actions on such bond and the same pursue to final judgment, execution and satisfaction.

CH. 165.

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 [Mass. Stat.  
 Mar. 8, 1792,  
 § 1.]

Condition.

[\*746]

[Ib. § 4.]

SECT. 2. *Be it further enacted*, That the Governor, with the advice of Council, upon the complaint or suggestion,

Governor and  
 council to de-  
 clare a vacan

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(a) He is required to keep his office at the seat of government, by ch. 212, vol. 3, p. 42.



CH. 165.

cy in certain cases,

[Ib. § 2.]

and appoint a commissioner of the treasury.

made under oath, of any surety of a Treasurer in any bond to be taken as aforesaid, that such officer is insane, or manifestly insolvent, or hath absconded and concealed himself for fear of his just creditors, or is absent from this State, or the duties of his said office, to the imminent hazard of the said State in respect to the trust in such officer reposed, and the truth of such complaint or suggestion appearing upon due examination thereof had, shall have the authority, and it shall be their duty, to discontinue such Treasurer and declare such office vacant.. And in case of vacancy in the office of Treasurer by death, resignation or otherwise, or said Treasurer shall become manifestly insolvent in the recess of the Legislature, the Governor, with advice and consent of the Council, shall appoint some suitable person a commissioner to transact the duties of said office during the remainder of the political year, for which such officer was chosen, unless the Legislature shall be sooner in session. And before such person so appointed shall proceed to discharge the duties of said office, he shall take and subscribe the oaths and give bonds with the same conditions required of the Treasurer elected by the Legislature, to the acceptance of the Governor and Council.

And two persons to take an account of monies, &amp;c. in the treasury.

Ib. § 3.]

[\*747]

SECT. 3. *Be it further enacted,* That whenever it shall become necessary that a Commissioner should be appointed under the second section of this act to transact the duties of Treasurer, it shall be the duty of the Secretary of State and the Attorney General, or two discreet and impartial citizens to be appointed by warrant under the hand and seal of the Governor as soon as practicable, after either of the events shall happen mentioned in the second section aforesaid, rendering\* it necessary for the appointment of a Commissioner, having first given notice to the sureties, or any two of them, or the late Treasurer, or Treasurer thus to be superseded, shall take a true and accurate inventory of all monies, notes, bonds, books of account and other property belonging to the State, which was in the possession of such Treasurer, or in the hands of any of his agents or servants, wherever to be found; all which shall be delivered over by them to such person, as may be appointed to discharge the duties of Treas-



urer as aforesaid, he giving a receipt therefor on the back of said inventory, which shall be lodged in the Secretary's office: a copy of which may be given to any person interested therein.

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SECT. 4. *Be it further enacted*, That if any Clerk, or other person employed by the Treasurer shall commit any fraud or embezzlement therein, and shall be duly convicted thereof before the Supreme Judicial Court, he shall be punished by fine not exceeding two thousand dollars, or by confinement to hard labor for a term of years, or for life, according to the nature and aggravation of the offence and the judgment of said Court thereupon. [Approved June 13, 1820.]

Punishment of fraud in clerks.

[Ib. § 4.]

## Chapter 166.

AN ACT directing the manner in which notices upon Petitions to be presented to the Legislature may be given.

SECT. 1. **BE** *it enacted by the Senate and House of Representatives, in Legislature assembled*, That when any individuals or corporations or their agents may have signed a petition to be presented to any future Legislature of this State, and when the granting the prayer of such petition may effect the rights or interests of any other individuals or corporations, the petitioners may cause the individuals or corporations whose rights or interests may be thus effected, if known, to be served with a true and attested copy of the petition sixty days at least before the commencement of the session of said Legislature, by any Sheriff, deputy Sheriff, Constable or Coroner, who shall make due return thereof: And when all the\* individuals or corporations whose right or interest may be thus effected are not known, the petitioners may cause a true copy of their petition to be published in any newspaper printed in the county, if any there be, otherwise in the next adjoining county, where such petitioners reside, three weeks successively, the last publication to be thirty days at least before the commencement of the session of said Legislature; and the notices thus given, shall have

Petitioners to the legislature may notify interested persons, if known, by serving them with copy of their petition 60 days before next session.

[\*748] If persons interested are not all known, the notice may be given by publishing in a newspaper, &c.



**CH 167.** the same effect as notices ordered by the Legislature upon petitions presented and given in pursuance of such orders.

Fees to sheriff, &c. for serving such notice.

**SECT. 2.** *Be it further enacted,* That every Sheriff, deputy Sheriff, Constable or Coroner, who may serve a notice as aforesaid, shall be allowed and paid by the petitioners, four cents a mile for his actual travel in making the service, twelve cents a page for each copy of the petition, and thirty cents for each service thereof; and after service shall, on demand, deliver the petition with his return thereon to the petitioners. [Approved February 24, 1821.]

## Chapter 167.

AN ACT in furtherance of good discipline in the Colleges of this State.

Innholders, retailers, stable keepers, &c. not to give credit to under graduates without permission of college officers.

**SECT. 1.** *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That no innholder, tavern keeper, retailer, confectioner, or keeper of any shop or boarding house for the sale of drink or food, or any livery stable keeper, shall give credit to any under graduate of either of the colleges within this State, without the consent of such officer or officers of the said colleges respectively, as may be authorized to act in such cases, by the governments of the same or in violation of such rules and regulations as shall be, from time to time, established by the authority of said colleges respectively.

No person to be licensed, &c. if objected to by college officers, as having violated this law.

**SECT. 2.** *Be it further enacted,* That no person shall be approved by the Selectmen of any town within this State, as fit to be licensed for either of the employments aforementioned; nor shall a license be granted to any person within this State, provided the President of either of said colleges or other officer, specially authorized for that purpose, shall certify\* or make known to such Selectmen, or Court empowered to grant such license, that such person, so applying, shall have within the year then last past, given credit to any under graduate of either of said colleges contrary to the provisions in the first section of this act.



**SECT. 3.** *Be it further enacted,* That if any person shall give credit to any under graduate of any of the colleges within this State, contrary to the provisions of this act, the corporations of the said colleges respectively, or the Treasurers of the same, may have and maintain, in any Court within this State proper to try the same, an action on the case in the corporate name of the said colleges respectively, or in the name of the Treasurers thereof respectively, against the person or persons so giving credit, and shall have and recover a sum equal to the amount so unlawfully trusted or credited, whether the amount, so credited to any such under graduate, shall have been paid or not : and the amount so recovered shall go and enure, the one half thereof to the benefit of the said colleges, respectively, and the other to the benefit of the poor of the town in which such credit may have been given. [Approved February 28, 1821.]

CH. 168.

Penalty for violation of this act, and mode of recovery.

### Chapter 168.\*

AN ACT to secure to owners their property in Logs, Masts, Spars and other Timber in certain cases (a).

[\*750]  
[\*751]  
[\*752]  
[\*753]  
[\*754]

**BE** *it enacted by the Senate and House of Representatives, in Legislature assembled, &c.*

[Repealed; see ch. 521, § 8, vol. 3, p. 412]

[Approved March 16, 1821.]

Additional Act, ch. 203, Vol. 3, p. 24; also Act passed Feb. 20, 1833.

(a) See Frost & al. vs. Rowse & al. 2 Glf. 180; Little vs. Thompson, 2 Glf. 228; Case of Parcher & al. 2 Glf. 321; Howe & al. vs. Shed, 3 Glf. 202.



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Chapter 169.\*

[\*755]

AN ACT securing to Mechanics and others, payment for their labour and materials expended in erecting and repairing houses and other buildings with their appurtenances (a).

Persons, by contract in writing, furnishing labour or materials in erecting or repairing buildings, to have a lien on the same, and the land on which it stands, for payment.

[Mass. Stat. Feb. 24, 1820, § 1.]

Provided such contract has been recorded.

No lien to continue more than 6 months after last instalment is due, unless, &c.

Register of deeds to record such contracts.  
[Ib. § 2.]

When person having such lien petitions C. C. C. Pleas

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That when any contract shall hereafter be made in writing, between the proprietor or proprietors of land on the one part, and any person or persons on the other part, for the erecting or repairing any house or other building, or their appurtenances, or for furnishing labour or materials, for the purpose aforesaid, the person or persons who shall in pursuance of such contract, have furnished labour or materials for such purpose, shall have a lien to secure the payment of the same upon such building, and the lot of land, on which the same stands, and upon the right of redeeming the same, when the same has been previously conveyed in mortgage : *Provided always,* That no such lien shall attach, unless such contracts shall have been recorded in the Registry of Deeds, in the county in which the land, on which such house or other building has been erected or repaired, lies ; and no lien created by this act, shall continue in force more than six months from the time when the last instalment shall fall due, by the contract by which such lien shall be claimed ; unless a legal process shall have been commenced, for the purpose of enforcing such lien.

SECT. 2. *Be it further enacted,* That it shall be the duty of the Register of Deeds, in the county in which any such land may lie, to record all such contracts, for the usual fees ; and when a contract shall consist of more than one part, the recording of one part shall be sufficient and have the same effect as recording the whole.

SECT. 3. *Be it further enacted,* That any person having a lien upon any building, and the lot of land on which it stands as aforesaid, may petition to the Circuit Court of

(a) See “ an act to secure rent to lessors of house lots and mill privileges,” ch. 258, vol. 3, p. 88 ; also an act additional thereto, ch. 318, vol. 3, p. 162 ; also “ an act giving a lien to ship carpenters and others on vessels,” ch. 387, vol. 3, p. 236.



## CH. 169.

for sale of such  
property, what  
proceedings  
are to be had.  
[\*756]  
[Ib. § 3.]

Common Pleas holden in the county in which the land, mentioned in any such contract, may lie, to order a sale of such land with the appurtenances; in which case the Court shall\* order notice to be given to all the creditors having a lien as aforesaid, on such estate, to appear and make out their claims under such contracts; and the owner or owners of such estate, to show cause if any they have, why a decree, that such estate should be sold, should not be passed, by causing each of them to be served with an attested copy of said petition, and the order of Court thereon, fourteen days at least before the time assigned for a hearing upon said petition; or by causing an attested copy of such petition and order to be published, at such times, in such newspaper as the Court shall direct, the last publication to be at least fourteen days before the time assigned for such hearing; and every such creditor, who does not appear and exhibit his claim to the Court, before the sale of such estate shall be decreed as aforesaid, shall not be entitled to the benefit of such lien. And when it shall be made to appear to the Court before which such petition shall be pending, either by the default or confession of the party petitioned against, or by the verdict of a Jury, that any sum of money secured by such contract, had been due and unpaid sixty days at the time of preferring such petition, the Court may enter up judgment against the respondent, in favor of each of such lien creditors, for such sum as may be found due to them respectively, and may order the land and appurtenances, in such contract mentioned, to be sold at public auction, to pay and satisfy the same; saving to the owner or owners of such estate the right of redeeming the same, at any time, within one year from the time of sale, by paying the purchaser, or any person claiming under him, the sum for which it was sold, with interest at the rate of twelve per cent; deducting therefrom the rents and profits, over and above the necessary repairs. And in the hearing upon any such petition, each of such lien creditors shall have a right to contest the claim of the other, by issue to the Jury or otherwise.

SECT. 4. *Be it further enacted,* That whenever the owner of any such estate shall have so failed to perform his

In certain cases court may order a partial



## CH. 169.

payment to the  
lien creditor.  
[Ib. § 4.]  
[\*757]

Proceedings,  
when a credit-  
or attaches the  
property be-  
fore the con-  
tract is record-  
ed.

contract or contracts, in relation thereto as aforesaid, that in the opinion of the Court, said estate, according to the true intent and meaning of this act, ought to be sold as aforesaid ; and\* the person or persons, or any of them, who have so contracted to furnish labour or materials for erecting or repairing such house or other buildings, and without any default on his, her, or their part, have not fully performed his, her, or their contract, a proportional rate of the sum, stipulated to be paid to such lien contractor, shall be awarded to him, her, or them. And any creditor of the owner of any lot of land, on which an house or other building shall be erected or repaired by contract as aforesaid, who shall have caused such lot of land, with the appurtenances to be attached, to secure the payment of his demand, previously to any such lien creditor entering into, and recording as aforesaid, his contract, for erecting or repairing such house, or other building, or their appurtenances as aforesaid ; shall be preferred to any such contracting creditor, so far as relates to the value of said land or building, in the state in which they were at the time when erecting or repairing of such house or building was commenced. And the value of such lot of land, or land and building at the time when the same shall be attached as aforesaid, shall be ascertained by the appraisal of three disinterested free-holders-of the county, in which such land shall lie ; one to be appointed by the petitioning creditor or creditors, one by the respondent, and one by the officer who shall make the sale. And in case the respondent neglects or refuses to appoint such appraiser, the appointment of two such appraisers shall be made by such officer.

Manner of ma-  
king sales.

[Ib. § 5.]

SECT. 5. *Be it further enacted,* That in all cases in which the Court shall order and decree, that any such estate shall be sold as aforesaid, the sale shall be made by the Sheriff or his deputy ; and if the Sheriff be interested, then by the Coroner of the county in which such estate lies ; and such notice shall be given of the time and place of sale, as is provided by law, when the right of redeeming real estate is sold, which has been conveyed in mortgage. And whenever it shall be found by the officer who has made such sale,



that the net proceeds of such sale are insufficient to satisfy the sums which shall have been awarded to the lien contract creditors, and attaching creditors, according to the provisions of this act, it shall be the duty of such officer, after satisfying this\* claim of the attaching creditor or creditors, if such there are, to apportion the net proceeds of such sale among the lien creditors, according to the sums to them respectively awarded ; and if the net proceeds of the sale of such estate, shall exceed the amount of all the sums ascertained and awarded as aforesaid, it shall be the duty of such officer to pay over the excess to the respondent.

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[\*758]

SECT. 6. *Be it further enacted,* That each and every lien creditor, his executors, administrators, or assigns, having received payment and satisfaction of his, or their demands according to the term of such contract ; or when such house or other building shall have been sold, and the proceeds thereof paid over, according to the provisions of this act, each and every such lien creditor, his executors, administrators, or assigns, shall enter upon the margin of the record of such contract, a discharge of his or their lien upon such house or other building, created by such contract ; or by deed duly executed, release the same ; and any party in interest shall be entitled to have like remedy for obtaining due discharge of such lien, in case the money shall be paid as aforesaid, as is now by law secured in equity to mortgagers, their heirs, executors, administrators or assigns.

When such contract is satisfied by payment or sale of the property, lien to be discharged on margin of the record.

[Ib. § 6.]

SECT. 7. *Be it further enacted,* That in all cases arising under this act, every party shall be entitled to a trial by Jury, of any matter of fact in the cause ; and any one or more of the parties may appeal from the judgment of the Circuit Court of Common Pleas, to the Supreme Judicial Court, as in other cases. [Approved February 14, 1821.]

Jury trial in all cases and right of appeal.

[Ib. § 7.]



AN ACT concerning Apprentices.

At what ages and in what manner minors may be bound as apprentices, and by whose consent.

[Mass. Stat. Feb. 28, 1795, § 1.]  
[\*759]

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled (a), That minors under the age of fourteen years, may be bound by deed, until that age, as servants or apprentices, by their father; and in case of his decease, by their mother or by their guardian legally appointed; or having no parent or guardian, may bind themselves,\* with the approbation of the Selectmen or major part of them, of the town where such minors reside. And all minors of the age of fourteen years or upwards may

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(a) 1. This statute does not take away from the father, the common law right of the father to assign the services of his minor son during minority, and the life of the father; but unless the binding out pursues the provisions of the statute, the common law remedy only will accrue to either party. *Day vs. Everett*, 7 Mass. 145.

2. "As well parents and guardians, as masters, ought duly to consider, that if the contract of apprenticeship does not pursue the statute, the apprentice cannot be discharged, if the master break the contract on his part; neither if the contract be broken on the part of the apprentice, can the master have those remedies, and that relief provided in the statute for contracts made pursuant to it; but the remedy for each party is by action, which in many cases may be inadequate." *Ib.*

3. An apprentice is not assignable. *Davis vs. Coburn*, 8 Mass. 299. See *Butler vs. Hubbard & al.* 5 Pick. 250.

4. An indenture of apprenticeship gives the master no authority to transport the apprentice beyond the jurisdiction within which the contract was entered into, and with reference to the laws of which the parties contracted. *Coffin vs. Barrett*, 2 Pick. 360. See *Hall vs. Gardner*, 1 Mass. 172; *Davis vs. Coburn*, 8 Mass. 299; *Com vs. Hamilton*, 6 Mass. 273.

5. Where an indenture of apprenticeship stated, "That a mother, as guardian by nature of her son, who was then over fourteen years of age, binds him as an apprentice to the plaintiff, and declares that 'the apprentice his master faithfully shall serve,' &c. enumerating the duties usually required of apprentices by their indentures. Then follows a covenant by the plaintiff to instruct and support the apprentice. The indenture concludes 'In testimony whereof the parties have to this indenture set their hands and seals,' and it is signed and sealed by the plaintiff, the mother and the apprentice. It was held, that the mother was not liable to an action of covenant for a breach of duty by the apprentice, for the language of the indenture was to be considered as only pointing out the duties of the apprentice, and not as a covenant on the part of the mother." *Holbrook vs. Bullard et ux.* 10 Pick. 68.



be bound by deed as apprentices or servants, females to the age of eighteen years, or to the time of their marriage within that age ; and males to the age of twenty-one years, by their father ; and in case of his decease, by their mother, or guardian legally appointed, having the minor's consent expressed in the deed : And any such minors having no father, mother or guardian within the State may, by deed, bind themselves with the approbation of the Selectmen or the major part of them, of the town where they reside : *Provided*, That in every case there shall be two deeds of the same form and tenor, executed by both parties ; one to be kept by each ; and where made by the approbation of the Selectmen, they, after having examined the terms of the deeds, shall express their approbation thereon, and sign the same : *Provided also (b)*, That all considerations which shall be allowed by the master or mistress in any contract of service or apprenticeship, shall be secured to the sole use of the minor thereby engaged. And all contracts which shall be made by any parent or guardian or by any minor for him or herself pursuant to this act, shall be good and effectual in law against all parties, and the minors thereby engaged, according to the tenor thereof.

Indentures to be in two parts, of the same form, executed by both parties.

All considerations allowed by master or mistress, to be secured to the minors.

SECT. 2. *Be it further enacted*, That no covenant of apprenticeship entered into by any minor, his parent or guardian, for the purpose of such minor's learning or being instructed in any trade or mystery, and made to any master and the wife of such master ; or to the executors, administrators or assigns of such master, shall be binding on such minor, parent or guardian, after the decease of the master ; but on the death of such master, the said covenant shall be deemed void from that time ; and in any such case any minor may be bound out anew, in the manner herein before prescribed.

No indenture to be binding on the minor after the death of the master, but void from that time.

[1b. § 5.]

SECT. 3. *Be it further enacted*, That it shall be the right and duty of parents and guardians, and of Selectmen

Parents, guardians and selectmen to in-

(b) When minors are bound pursuant to this statute, all considerations must be secured to them ; whether such binding be by parents, or guardians, or by the minor, with the approbation of the selectmen. *Day vs. Everett*, 7 Mass. 145.



## CH. 170.

quire into  
treatment of  
minors,  
[\*760]  
[Ib. § 2.]  
and may com-  
plain to C. C.  
Common Pleas  
against master  
for wrongs  
done to the mi-  
nors.  
Court may pro-  
ceed with or  
without Jury :

and for good  
reasons dis-  
charge the mi-  
nor from his  
apprenticeship  
or service; or  
award costs  
against com-  
plainants.

In case of gross  
misbehaviour  
of apprentice  
or servant  
bound, master  
or mistress  
may complain  
to C. Court  
Com. Pleas.  
Court after no-  
tice to proceed  
as before,

[Ib. § 4.]

and for good  
cause may dis-  
charge the  
master or mis-  
from their in-  
dentures.

for the time being, binding minors as aforesaid, to inquire into their usage and defend them from the cruelties, neglects or breach of\* covenant of their masters or mistresses; and such parents, guardians or Selectmen, for the time being, may complain to the Circuit Court of Common Pleas in the county whereof such master or mistress is an inhabitant, against him or her for any personal cruelty, neglect or breach of covenant: and the Court, after having duly notified the party complained against, shall proceed to hear and determine such complaint, with or without a Jury, according as the allegations of the parties may be. And if the same complaint shall be supported, the Court may render judgment, that the said minor be discharged from his or her apprenticeship or service, with costs against the master or mistress; and award execution accordingly: in which case the deed of service or apprenticeship shall be deemed void from the time of rendering such judgment, and the minor may be bound out anew. But if such complaint shall not be supported, the Court shall award costs to the respondent against the parent, guardian or Selectmen where the complaint of the Selectmen shall be without probable cause, and execution accordingly.

SECT. 4. *Be it further enacted*, That if any servant or apprentice bound as aforesaid, shall be guilty of any gross misbehaviour (c), wilful neglect or refusal of his or her duty, the master or mistress may complain thereof to the Circuit Court of Common Pleas in the county whereof he or she is an inhabitant; and the said Court after having duly notified such servant or apprentice, and all persons covenanting on his or her behalf; and the Selectmen for the time being of the town, (where Selectmen shall approve as aforesaid) shall proceed to hear and decide on such complaint, with or without Jury as the allegations of the parties may be; and if the said complaint shall be supported, the Court may render judgment, that the master or mistress shall be discharged from the contract of service or apprenticeship, and every

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(c) If he steal his master's goods, the master's remedy is by a complaint under this provision, in order to effect a discharge. *Powers vs. Ware*, 2 Pick. 451.



article thereof obligatory on him or her, with costs, and award execution for costs accordingly against the parent, guardian or minor, where the minor shall engage as aforesaid, for him or herself; and any servant or apprentice whose master or mistress shall be discharged as aforesaid may be bound out anew. CH. 171.

SECT. 5.\* *Be it further enacted*, That if any servant or apprentice, bound as aforesaid, shall depart from the service of his or her master or mistress, it shall be lawful for any Justice of the Peace of the county where such servant or apprentice may be found, on complaint made to him by the master or mistress, or by any one in his or her behalf, on oath, to issue his warrant to the Sheriff, his deputy or any Constable within the county directing him to apprehend such servant or apprentice, and to bring him or her before the said Justice, who upon the hearing shall order the said servant or apprentice to be returned to the place of his or her duty; or to commit him or her to the common gaol of the county, there to remain for a term not exceeding twenty days unless sooner discharged by his or her master or mistress: And the Justice's warrant for returning such servant or apprentice to the place of his or her duty, directed to any officer or other person by name, shall authorize him to convey any such servant or apprentice to such place, notwithstanding it may be in any other county in the State; and the costs of the process and commitment by the said Justice, shall be paid by the master or mistress, to be recovered by him or her on the deed or covenant: and when recovered of the guardian, the same with all further costs he may be held to pay, shall be a proper article of charge in his guardianship account. [Approved February 28, 1821.]

[\*761]  
Justice of the Peace, on complaint may cause absconding apprentice, &c. to be arrested,

and returned to the place of his duty, or commit him to prison, &c. Such warrant shall justify the officer in carrying the apprentice to his master though in another county.

Costs, how to be paid.

See ch. 122, § 6, 7, ante pp. 637, 638.

## Chapter 171.

AN ACT against Hawkers, Pedlars and Petty Chapmen.

SECT. 1. *BE it enacted by the Senate and House of Representatives in Legislature assembled*, That from and after Penalty for carrying certain articles



CH. 171. the first day of May next, every hawker, pedlar, petty chapman, or other person going from town to town, on foot, or with a horse or horses, carriage or carriages, or otherwise carrying to sell, or exposing to sale, any feathers, indigo, tin ware, books, medicines, nostrums, essences, or any goods, wares or merchandize in this State, shall forfeit a sum not\* exceeding fifty dollars, nor less than twenty dollars, to be recovered by complaint, indictment, or information; also all such articles and goods, wares and merchandize, the one half to him or them who will prosecute therefor, the other half to the use of the town where the offence happens; and any Justice of the Peace upon complaint to him made, of any such offence, may arrest and bring before him any person or persons complained against, and order him or them to recognize with sufficient surety or sureties to appear before the next Circuit Court of Common Pleas in the county where the offence is committed, and for want of such surety may commit such offender or offenders to gaol; also may secure and detain all such articles before named, and such goods, wares, and merchandize until the trial, and in case such offender is convicted, such Court shall decree all such articles and goods, wares and merchandize to be forfeited to the uses aforesaid: *Provided however*, That nothing herein shall be so construed, as to prevent any person from vending in any town or place in this State, any farming utensils, or wooden wares, or any articles of domestic (a) manufacture the principal material of which is wood; or from selling or marketing any fish, fruits, provisions, garden seeds, combs, leather, shoes or potter's earthen ware.

from town to town for the purpose of sale.

[\*762]

Mode of recovery.

Proviso.

Certain persons may be licensed on payment of duty, to sell goods in the above manner personally.

SECT. 2. *Be it further enacted*, That any person who is a citizen of this State, and who will procure a certificate from the Selectmen of the town where he resides, that he is of good moral character, may apply to the Court of Sessions of any county in this State for a license to sell tin ware for one year from the time of said application within this State; and said Court may grant said license, *provided* the applicant

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(a) Upon an indictment for peddling goods not of domestic manufacture, it is incumbent on the government to prove affirmatively that the goods were of foreign manufacture. *Com. vs. Samuel*, 2 Pick. 108.



shall produce to said Court said certificate and also a receipt from the Treasurer of said county, that he has deposited ten dollars for the use of the State, on condition said license is granted; and the person obtaining such license may be permitted *personally* to vend any such tin ware before named as though this law had not been passed.

CH. 172.

SECT. 3. *Be it further enacted*, That it shall be the duty of every person licensed as aforesaid, to have on every carriage employed by him for the conveyance of tin ware, in some conspicuous place on the same, his name printed in large letters\* at least one inch wide, also the words and letters "licensed by C. S." and also the name of the county where such license was granted; and also shall exhibit to any Sheriff, deputy Sheriff, or Justice of the Peace of any county, Selectmen or Constable of any town, when thereto required, a certificate of such license, and in case he shall fail in either of those particulars he shall forfeit ten dollars, to any person who shall sue for the same. [Approved February 10, 1821.]

Persons so licensed, to have their carriages marked, &c.

[\*763]

## Chapter 172.

AN ACT respecting Boats and Lighters employed in transporting Stones, Gravel or Sand, within this State.

SECT. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled*, That every boat or lighter, employed in transporting stones, gravel or sand within this State, shall be marked at light water mark, and, at least, at five other places, with figures, four, twelve, sixteen, twenty-four and thirty, legibly made on the stem and stern post thereof; which figures shall express the weight such boat or lighter is capable of carrying, when the lower part of the respective numbers shall touch the water, in which the said boat or lighter shall float; and the marks expressive of the weight such boats and lighters are capable of carrying, shall hereafter be inspected once every year; and whenever such mark shall be found to be illegible, the same

Boats and lighters, for sand, stones, &c. to be marked, and how.

[Mass. Stat. Mar. 7, 1801, § 1.]



## CH 173.

Penalty if used  
unmarked;

and for mark-  
ing falsely.

Selectmen shall  
annually ap-  
point inspect-  
or.

[\*764]  
[Ib. § 2]

Inspector to  
examine and  
mark anew,  
when necessa-  
ry.

[Mass. Stat.  
June 15, 1815,  
§ 2.]

Selectmen to  
regulate fees  
of inspector.

[Ib. § 3.]

shall be renewed : and every person who shall use or employ any boat or lighter, for the purpose of transporting stones, gravel or sand, as aforesaid, which shall not be marked as in this act is provided, shall forfeit and pay the sum of fifty dollars, to be recovered by action of the case, in any Court proper to try the same, by any person who will sue therefor. And any person who shall put or cause to be put, on any boat or lighter as aforesaid, any false marks as aforesaid, shall be subject to the like penalty, to be recovered in like manner.

SECT. 2. *Be it further enacted*, That it shall be the duty of the Selectmen in any town, where boats and lighters are owned,\* which may be employed in transporting stones, gravel or sand, as contemplated in this act, to appoint annually in the month of April or May, some suitable person to ascertain the capacities of all such boats and lighters, and mark the same as is prescribed in this act ; who shall be under oath faithfully to perform the duty as herein prescribed.

SECT. 3. *Be it further enacted*, That whenever the inspector shall be of opinion that the burden or capacity of any such boat or lighter shall have been diminished or increased by any repairs made on the same, or otherwise, it shall be his duty forthwith, to ascertain anew the capacities of such boats or lighters, and to mark the same accordingly.

SECT. 4. *Be it further enacted*, That the Selectmen of towns in which boats or lighters used for the aforesaid purposes, are owned, be, and they are hereby empowered, and it shall be their duty to regulate the amount of fees which may be demanded by the inspector of boats and lighters, of the owners thereof, for the performance of the duties imposed upon him by this act. [Approved January 23, 1821.]

## Chapter 173.

AN ACT for the protection of Harbours and Shores.

Penalty for  
throwing bal-  
last overboard

SECT. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled*, That if any master



of a ship or vessel or other person, shall unload, or throw overboard any ballast in any road, port or harbour within this State, he shall forfeit and pay, for each and every such offence, a fine not exceeding sixty dollars, to be recovered in an action of debt in any Court proper to try the same; one half thereof to the use of the town, in which such offence is committed, the other half to the use of any person who shall prosecute for the same.

CH. 174.

into harbours, &c.

How to be recovered.

[Mass. Stat. 1713.]

SECT. 2. *Be it further enacted*, That if any master of a vessel or other person, shall take off any stone, or other ballast, from any island, beach, or other land without the consent of the owner or proprietor thereof, such person shall forfeit and pay a fine for each and every such offence, not exceeding seven\* dollars; to be recovered in an action of debt before any Justice of the Peace within the county in which such offence shall be committed, the one half thereof to the use of the town, where such offence is committed, the other half to the use of any person, who shall prosecute for the same. [Approved March 2, 1821.]

Penalty for taking ballast from any island, &c. without leave.

[\*765]

How to be recovered.

## Chapter 174.

AN ACT to prevent Damage by mischievous Dogs.

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That when any dog shall do any damage either to the person or the property of any person, the owner or keeper of any such dog, and also the parent, guardian, master or mistress of any minor or servant who shall own or keep any such dog, shall be liable to, and shall forfeit and pay to the person injured double the amount of the damage done by such dog, to be recovered by action of trespass, before any Court proper to try the same.

Owners of dogs, and parents, masters, &c. liable for double damages.

[Mass. Stat. Feb. 19, 1799, § 8.]

SECT. 2. *Be it further enacted*, That it shall and may be lawful, for any person or persons in this State, to kill any dog that shall suddenly assault them while they are quietly and peaceably walking or riding any where out of the enclosure of the owner or keeper of such dog; and it shall also

Persons suddenly assaulted by a dog, may kill him, [Mass. Stat. Feb. 25, 1792, § 1.]



**CH. 174.** be lawful for any person to kill any dog that shall be found out of the enclosure or immediate care of its owner or keeper, worrying, wounding, or killing any neat cattle, sheep or lambs.

and if wounding cattle, dog may be killed.

Penalty for not killing or confining a dog, on complaint upon oath, and notice, &c.

[Ib. § 2.]

[\*766]

**SECT. 3.** *Be it further enacted,* That if any person shall be assaulted by any dog in manner as aforesaid, or if any dog shall hereafter be found strolling out of the enclosure or immediate care of its owner or keeper, by day or by night, and the person so finding such dog, shall, at any time within forty-eight hours after such an assault, or the finding such dog strolling as aforesaid, make oath thereof before any Justice of the Peace for the county or Clerk of the town where the owner of such dog shall dwell (who are hereby empowered to administer said oath and to certify the same) and shall further swear, that he really suspects such dog to be a dangerous\* or mischievous dog, and shall give notice thereof to such owner or keeper, by delivering him a certificate of such oath, signed by such Justice or Clerk, it shall be the duty of the owner or keeper of such dog forthwith to kill or confine the same; and if he shall neglect so to do for the space of twenty-four hours after notice is given as aforesaid, he shall forfeit and pay the sum of five dollars to any person that shall sue for the same, to be recovered with costs, by action of debt before any Justice of the Peace in the county in which such owner or keeper dwells.

After such complaint and notice, such dog, if at large, may be killed.

[Ib. § 3.]

**SECT. 4.** *Be it further enacted,* That if after such notice, such dog shall not be killed or confined, but shall again be found strolling out of the enclosure or immediate care of its owner or keeper, it shall and may be lawful for any person to kill such dog; and if sued therefor (or for killing a dog, as in and by the first enacting clause of this act, is provided) to plead the general issue, and give this act and the special matter in evidence under it.

Treble damages may be recovered for injuries done after such notice.

Ib. § 4.]

**SECT. 5.** *Be it further enacted,* That if any dog, after notice is given as aforesaid, shall by any sudden assault in manner as aforesaid, wound or cause to be wounded, any person, or shall worry, wound or kill any neat cattle, sheep or lambs, or do any other mischief, the owner or keeper shall be liable to pay to the person injured thereby treble



damage, to be recovered with costs, by action of debt before a Justice of the Peace in the county where such owner dwells, if such treble damage doth not exceed twenty dollars, but if it doth exceed that sum, then before the Circuit Court of Common Pleas in such county. [Approved March 2, 1821.]

CH. 175.

## Chapter 175.

**AN ACT** for the regulation of the Penobscot and Passamaquoddy tribes of Indians.

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled (a), That the Governor, by and with the advice of the Council, be, and he hereby is authorized and empowered to appoint, during pleasure, one or more, not exceeding\* three persons, to be agents for the Penobscot tribe of Indians. Governor to appoint agents for Penobscot Indians. [\*767]

SECT. 2. *Be it further enacted*, That the Governor, be, and he hereby is authorized to appoint, as aforesaid, one or more, not exceeding three persons, to be agents for the Passamaquoddy tribe of Indians (b). Also for Passamaquoddy Indians.

SECT. 3. *Be it further enacted*, That the agent or agents, appointed as aforesaid, for the Penobscot tribe of Indians, shall provide, furnish, pay and deliver to the said Indians, for and on account of this State, all such articles, goods, provisions and monies as shall from time to time become due them by virtue of any treaty or agreement now existing, or that may hereafter exist between them and this State. Penobscot agent to provide and deliver on account of the State the goods, monies, &c as they become due.

SECT. 4. *Be it further enacted*, That the persons appointed agents for either of said tribes, as aforesaid, shall be Such agents to be sworn and give bond.

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(a) It is provided by ch. 801, vol. 3, p. 142, "That from and after the passing of this act, the Governor, with advice and consent of Council, shall have full power and authority, at any, and at all times, to draw his warrant on the Treasury of the State, for such sum or sums, as may, from time to time, be found necessary to carry into effect all treaties with the several tribes of Indians, within the limits of the same, now existing, or which may hereafter exist; and to settle and adjust all accounts, of Indian Agents against the State, agreeably to any of the treaties aforesaid." See also ch. 892, vol. 3, p. 240.

(b) See ch. 271, vol. 1, p. 99.



## CH. 175.

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 Their duty.

Contracts, &c.  
 respecting  
 lands of in-  
 dians, void un-  
 less approved  
 by agents.

No lease good  
 for more than  
 one year.

Agents not to  
 sell timber, &c.  
 more than 500  
 dollars value,  
 annually.

Agents may  
 maintain ac-  
 tions in their  
 own names, for  
 debts due in-  
 dians, &c.

[\*768]

Agents to keep  
 record of their  
 proceedings.

sworn or affirmed to, and shall give bonds, to the State, with sufficient surety or sureties, to the satisfaction of the Governor and Council, for the faithful discharge of the trust reposed in them by this act, and shall have the care and management of their property, for the use and benefit of said Indians.

And all contracts and bargains of every kind, relative to the sale or disposal of trees, timber or grass growing, or being on said Indians' land, and all leases or other contracts relative to the improvement of lands, which any person may obtain from said Indians, shall be void and of no effect, unless the same shall be examined and approved by the person or persons acting as agents as aforesaid. And no lease (c) of land or contract for trees, timber or grass, shall have effect for a longer term than one year. Nor shall the agents for either of said tribes sell or dispose of the trees or timber of said Indians, to an amount exceeding five hundred dollars in any one year.

SECT. 5. *Be it further enacted*, That the agent or agents for either of said tribes, in his or their own names, and in said capacity, may maintain any proper action, or actions for any sum due any Indian or Indians of their respective tribes, or for any injury done to them or their property, and all property or money received or recovered by said agents in their said capacity shall be by them distributed among the Indians of the tribe for which they are agents, according to\* their usages, rights and interests; or otherwise vested in such articles as shall be most useful to said Indians.

SECT. 6. *Be it further enacted*, That the person or persons appointed agents as aforesaid, shall keep a true record of their proceedings relative to the trust reposed in them by this act, and correct accounts of all receipts and expenditures of all monies and other property that shall come to their hands, as such agents, and shall lay the same before the Governor and Council for inspection and settlement at least once in every year, and oftener if required, who are hereby authorized to adjust and settle the same. [Approved March 5, 1821.]

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(c) See ch. 323, vol. 3, p. 169.



## Chapter 176.

## CH. 176.

## AN ACT for regulating Ferries.

**SECT. 1.** *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That no person or persons whatever, shall keep a ferry within this State, so as to demand or receive pay, without a special license (a) first had and obtained from the Court of Sessions of the county wherein such ferry may be; and the said Court is hereby empowered to grant such licenses to such person or persons as shall be judged suitable for such service by the same Court; and to state the fare or ferriage at each ferry for passengers, horses and other creatures, carriages, waggon, carts, teams and other things there transported, always having regard to the breadth and situation of, and the more or less passing at any ferry; in all cases taking bond with sufficient sureties, of each ferryman for the faithful performance of the duties and services of his place; excepting however, all such ferries as are already stated and settled by the Court or town to whom they appertain.

**SECT. 2.** *Be it further enacted,* That all ferrymen at the several ferries in this State, as well as those stated and settled as aforesaid, as others, shall keep a good boat or boats in good repair, suitable to the water they are to ferry over, and give ready and due attendance on passengers on all occasions, for the times and according to the regulations established\* at any ferry; and the keeper or keepers of each ferry, for every neglect of such attendance, shall forfeit and pay one dollar; and for every neglect in keeping such a boat twenty dollars; one moiety thereof in each case, to the use of the State, and the other moiety to him or them who shall inform and sue for the same; and be further liable to pay in an action on the case all such special damages as any person shall sustain by such neglect.

No person to keep a ferry unless licensed by Court Sessions;

[Mass. Stat. Feb. 14, 1797, § 1.] who are to grant such license and establish rate of ferriage.

Ferryman to give bond, &c.

Ferrymen to keep good boats,

[Ib. § 2.]

and give due attendance, &c.

[\*769]

Penalty for neglect,

and liability to pay damages.

**SECT. 3.** *Be it further enacted,* That if any person or persons shall keep a ferry or transport passengers over, or across any stated ferry, so as to demand or receive pay, having no right or authority so to do, he shall forfeit and pay for

Penalty for keeping ferry and demanding pay without authority. [Ib. § 3.]

(a) See ch. 457, vol. 3, p. 298.



## CH. 176.

every such offence four dollars, one moiety thereof to the State, and the other to him or them who shall inform and sue for the same ; and be further liable in a special action on the case, to pay such damages as may or shall accrue to the person or persons assigned and authorized to keep any such stated ferry or ferries.

When Court of Sessions set up ferry, the town in which it may be, must provide a ferryman, &c.

[Ib. § 4.]

who is to be licensed by the Court, and give bond.

Court to fix the fare.

Penalty for such ferryman's neglect.

[\*770]

Towns on opposite sides of a river, to provide a ferryman jointly or alternately.

[Ib. § 5.]

[†See statute passed Feb. 27, 1833, to prevent the obstruction of ferries.]

SECT. 4. *Be it further enacted*, That whenever the Court of Sessions of any county in this State, shall judge it necessary to set up a ferry for the convenience of passing any river or waters, and no person shall appear to keep the same for the stated profits thereof, the town wherein such ferry may be, shall take effectual care to provide suitable person or persons to keep and attend the same at such place, and in such times of the year, as the said Court shall judge necessary ; which person or persons shall be licensed by such Court as aforesaid. And the said Court shall take bonds with sureties of such persons for the faithful performance of the duties and services of their places ; and state the fare or ferriage to be demanded and received at such ferry, having regard to the breadth and situation of, and the more or less passing at the same. And the person or persons so appointed ferrymen at any ferry so set up, shall keep a good boat or boats in good repair, suitable to the waters they are to ferry over ; and on failure at any time so to do, shall forfeit and pay twenty dollars for each neglect ; and shall also give ready and due attendance on all passengers ; and for each neglect so to do, shall forfeit and pay one dollar, one moiety thereof in each case to the town wherein such ferry may be, and the other moiety\* to him or them who shall inform or sue for the same.

SECT. 5. *Be it further enacted*, That if any such ferry so judged necessary, shall be over any river or water when one town joins thereto on one side, and another town on the other side ; in such case the said towns shall either jointly or alternately, provide such person or persons to keep such ferry as the said Court shall order.

SECT. 6. *Be it further enacted*, That any town neglecting to provide suitable persons to keep ferries† as aforesaid shall forfeit and pay forty dollars for each month's neglect, one moiety thereof to the use of the State, and the other moiety



to him or them who shall inform and sue for the same ; and all the forfeitures aforesaid which may be incurred, shall be recoverable in an action of debt, with costs of suit, before a Justice of the Peace or Circuit Court of Common Pleas of the county wherein the ferry may be, according to the amount of the forfeitures to be recovered. [Approved February 24, 1821.]

CH. 177.  
[Ib. § 6.]

Additional Act, ch. 292, vol. 3. p. 130.

## Chapter 177.

AN ACT for regulating Pilotage in the several ports in this State.

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That the Governor with advice of Council, be, and he hereby is empowered to appoint and commission one or more pilots for such port or ports in this State as may apply for the same, such application to be signed by a majority of the ship owners and ship masters then in the port recommending such suitable person or persons, and give to each of the said pilots branches or warrants for the due execution of the duties of their respective offices.

Governor and Council on application of ship owners and masters to appoint pilots,

and grant them warrants.

SECT. 2. *Be it further enacted,* That every pilot appointed as aforesaid shall before he enter upon the business of his office, take the following oath or affirmation before some Justice of the Peace, viz.

Each pilot to be sworn.  
[Mass. Stat. July 11, 1788, § 2.]

You, A. B. do swear (or affirm as the case may be) that you will from time to time, truly and faithfully perform the duties\* of a pilot for the harbour or port of ——— according to your best skill and judgment, agreeable to the laws of this State. *So help you GOD.*


Form of the oath.  
[\*771]

And each of said branch pilots shall before he enter upon the duties of his office, give bonds with sufficient sureties to the Treasurer of this State, in the sum of five thousand dollars, for the due performance of the trust reposed in him : And every branch pilot being commissioned and qualified as aforesaid, is hereby empowered and directed to take charge of any vessel or vessels drawing nine feet of water and up-

And give bond to State treasurer in sum of 5,000 dollars.

Duty of branch pilots as to inward-bound vessels.



**CH. 177.**  wards, bound into any of the ports aforesaid ; and shall pilot such vessel or vessels into the port assigned to him, first shewing to the master thereof, his branch or warrant, and acquainting him or them of his fees.

Governor and Council to establish their fees,

[Ib. § 5.] and send a schedule of them to each collector of customs.

Any man may pilot his own vessel

Pilot liable to pay for vessel, cast away, &c. by his neglect or unskilfulness,

[Ib. § 8.]

to the owners or insurers.

Outward-bound vessels subject to same regulations as inward-bound (except coasting and fishing vessels.)

[Ib. § 10.]

[\*772] Pilots of such, liable to same penalties, &c.

**SECT. 3.** *Be it further enacted,* That the Governor with the advice of Council, be, and he hereby is empowered to determine and fix the fees of pilotage of the several pilots, and to specify the same in their respective warrants ; and also to transmit to each Collector of the customs, in the ports and harbours aforesaid, a schedule of the said fees, to be by such Collector hung up in his office for public inspection : *Provided nevertheless,* That any master of a vessel who may choose to hazard the pilotage of his own vessel into or out of any port, shall be at liberty so to do.

**SECT. 4.** *Be it further enacted,* That if any vessel, while under the charge and direction of a branch or warrant pilot, shall be lost, cast away or run aground, through the unskilfulness or neglect of such pilot, then and in that case, such pilot shall be liable to pay the just value of the vessel and her cargo ; or any proportionable damage which may be sustained thereby ; to be sued for and recovered by the owner or owners, or insurer or insurers thereof, in any Court proper to try the same.

**SECT. 5.** *Be it further enacted,* That all (a) vessels drawing nine feet of water and upwards, bound to sea, out of any of the ports aforesaid, (except coasting and fishing vessels) (b) shall be under the same restrictions, and liable to pay the same fees, that vessels are under and liable to, that are bound into any of the same ports ; and all pilots of any outward bound vessels shall be liable to similar actions for damages,\* and subject to the same penalties, for their unskilfulness or neglect, that they would have been, if the same vessels had been bound into any of the ports aforesaid : and to the intent that a suitable check may be had upon the pilots

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(a) *Ayers vs. Knox*, 7 Mass. 306.

(b) A registered vessel bound from one port to another in the United States, and thence to a foreign country, is a coaster. *Tilley vs. Farrow*, 14 Mass. 17.



alforesaid, and that they may be excited to a due vigilance in the discharge of the duties assigned them : CH. 178.

SECT. 6. *Be it further enacted*, That the Governor and Council be, and they hereby are empowered to hear and determine all complaints exhibited against the said pilots for mal-conduct in the premises, and to suspend or remove them at their discretion, and to appoint others in their room, laying the reasons therefor before the Legislature at the next session after such suspension or removal. [Approved February 24, 1821.]

Governor and Council to decide on complaints against pilots.  
[Ib. § 11.]

## Chapter 178.

AN ACT to regulate the Herring Fishery (a).

SECT. 1. **BE** *it enacted by the Senate and House of Representatives in Legislature assembled*, That no person shall take any fish called English herrings, within the waters of this State, between the first day of March and the first day of September in each year, for the purpose of pickling or smoking the same.

Herrings not to be taken between March 1, and Sept. 1.

SECT. 2. *Be it further enacted*, That no net having meshes less than seven eighths of an inch square shall be used for taking herrings for the purpose of pickling or smoking the same.

What nets may be used.

SECT. 3. *Be it further enacted*, That no more than sixty yards of nets in length and five yards in width for each fisherman employed on board of any fishing vessel, shall be carried or used, in any such vessel, for the purpose of taking herrings, and no one vessel shall carry or use more than three hundred yards in length, at any one time, for the purpose of taking herrings.

Size of sets on board fishing vessels.

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(a) 1. The Legislature may unquestionably regulate the taking of fish within the State, and oblige all citizens to conform to the regulations, by inflicting penalties for the violation of them. *Burnham vs. Webster*, 5 Mass. 269. See *Vinton & al. vs. Welsh*, 9 Pick. 87.

2. All laws regulating the taking of fish are public statutes, and the Court must *ex officio* take notice of them. *Ib. & Com. vs. McCurdy*, 5 Mass. 325.



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No nets to be set across streams, but lengthwise.

[\*773]

Herrings not to be taken between sunset on Saturday night and sunrise on Monday morning.

None but citizens of this State to set seine or place wear to catch salmon.

Penalties, and how recovered.

SECT. 4. *Be it further enacted*, That no person shall set or place (b) any net crosswise of any river, stream, harbour, creek or cove, within this State; but all nets shall be set or placed lengthwise of the river, stream, harbour, creek or cove,\* in which such nets shall be set or placed for the purpose of taking herrings.

SECT. 5 *Be it further enacted*, That it shall not be lawful for any person to take herrings within any river, stream, harbour, creek or cove, within this State, between sun-set on Saturday night, and sun-rise on Monday morning in each week, for the purpose of pickling or smoking the same.

SECT. 6. *Be it further enacted*, That no person other than a citizen of this State shall set or place any net, seine, wear or other machine in any of the rivers, streams, creeks, harbours, inlets or coves in this State, for the purpose of taking salmon, shad, herrings or alewives (c).

[SECT. 7, repealed; see ch. 241, § 1, vol. 3, p. 71.

SECT. 8. *Be it further enacted*, That any person who shall violate any provision of this act, shall forfeit and pay, for each and every such offence, a fine not exceeding fifty, nor less than five dollars, to be recovered in an action of debt in any court proper to try the same, by and for the use of the person, who shall prosecute therefor (d). [Approved March 19, 1821.]

Additional Act, ch. 241, vol. 3, p. 71.

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(b) A seine having one end of it attached to a boat which is made fast to a stake on one side of a river, and having at the other end a rope which is passed round a stake on the other side of the river, and is held by men and drawn or slackened at pleasure, is a *placed* or *set* seine. *Watertown vs. Draper*, 4 Pick. 165.

(c) By ch. 255, vol. 3, p. 86, it is provided that no person shall set any net for the purpose of taking herrings in any river, stream, harbour, creek or cove in the county of Washington, except to be used for bait only.

(d) See act passed March 8, 1832, ch. 23; and act passed March 9, 1832, ch. 35.



**Chapter 179.****CH. 179.**

AN ACT for the preservation of certain Fish.

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That it shall not be lawful for any person to take any of the fish, called pickerel or trout, in any of the ponds, rivers or streams within this State, with spears in the night time, or by shooting them at any time ; and every person offending, contrary to the true intent of this act, upon conviction thereof, before any Justice of the Peace, shall pay a fine of fifty cents for each and every pickerel or trout so taken, to and for the use of the person who shall sue for the same.

Penalty for killing pickerel in night by spearing, or shooting at any time.

[Mass. Stat. Feb. 3, 1819.]

SECT. 2.\* *Be it further enacted*, That it shall not be lawful for any person to take any oysters from their beds, destroy them or wilfully obstruct their growth therein, in any part of this State, except as is hereinafter excepted ; and every person who shall so take, destroy or obstruct the same, shall forfeit and pay for every bushel of oysters, including the shells so taken or destroyed, the sum of two dollars : *Provided however*, And it shall, at all times, be lawful for the major part of the Selectmen, for the time being of any town wherein oyster beds shall be, to give permits in writing, to any person to take oysters from their beds, at such times, in such quantities, and for such uses, as they shall think reasonable, and express in their permit : *Provided further*, And it shall also be lawful for every inhabitant of any such town, without such permit, to take oysters from their beds therein for the use of his or her family, from the first day of September to the first day of June annually.

[\*774]  
Penalty for taking away or destroying oysters,

[Mass. Stat. Feb. 26, 1796, § 1.]

unless by permission of selectmen.

SECT. 3. *Be it further enacted*, That if any person shall take any other shell fish from their beds, destroy them or wilfully obstruct their growth therein, in any harbour, creek, salt water river, bay or inlet in this State, except as is hereinafter excepted, the person so offending shall forfeit and pay for every bushel of such other shell fish, including the shells so taken or destroyed, the sum of one dollar : *Provided nevertheless*, That the major part of the Selectmen for the time being, of each of the said towns, bordering on any harbour, creek, salt water river, bay or inlet, shall at all times have

Penalty for taking other shell fish, excepting by permission, &c.

[Ib. § 2.]



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power to give permits, in writing, to any person to take such other shell fish from their beds in their said towns, at such times, in such quantities, and for such uses, as they shall deem reasonable, and express in their permit : *Provided also*, That every inhabitant of each of the said towns without such permit shall have a right to take such other shell fish from their beds therein for the use of his or her family : *And provided further*, That nothing in this act shall extend to deprive any native Indians of the privilege of digging shell fish for their own consumption, or to prevent any fisherman from taking any quantity of shell fish which he may want for bait, so that it do not exceed seven bushels, including their shells, at any one time.

[\*775]

Vessel, boat,  
&c. with oys-  
ters, &c. on  
board, without  
permit, in cer-  
tain cases lia-  
ble to seizure  
for said fines.

[lb. § 8.]

To be dis-  
charged on  
payment of  
such fines.

SECT. 4.\* *Be it further enacted*, That if any vessel, boat, or craft shall be found within the limits of any town, and not owned therein, with any oysters on board, taken in such town without such permit, or within the limits of any one of the towns and not owned therein, with other shell fish on board, taken in such town without such permit ; it shall be lawful for any inhabitant or inhabitants of any town where- in such vessel, boat or craft shall so be found trespassing, to seize and detain the same, not exceeding forty-eight hours, in order that the same, if need be, may be attached or ar- rested by due process of law, in that time to answer the said fines and forfeitures, with costs of suit : *Provided however*, That as soon as the owner or master of any such vessel, boat or craft, shall pay said fines and forfeitures, and before sued, to the Treasurer of the town, to the use thereof, where- in the same shall be incurred, such vessel, boat or craft shall be discharged with the effects therein. [Approved March 19, 1821.]

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## Chapter 180.

AN ACT repealing certain Acts therein named.

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That from and after




the passing of this Act, the following Acts made and passed by the Legislature of the Province of Massachusetts Bay, and of the Commonwealth of Massachusetts, be, and the same are, as respects this State, hereby repealed. *Provided*, That where any of said Acts have been revised and re-enacted, or come within the purview of any Act or Acts passed during the present session of the Legislature, and such last mentioned Act or Acts, in whole or in part, are not to take effect and go into operation until a future day, in all such cases such of said Acts hereby repealed, shall continue in force until the revised or re-enacted Acts within the purview of which they come, shall go into operation, namely :

An Act for the better rule and government of the Indians in their several places and plantations. Passed in the year sixteen\* hundred and ninety three. An Act for preventing abuses to the Indians. Passed in the year seventeen hundred. An Act for the better making and measuring of malt. Passed in the year seventeen hundred. An Act to prevent and make void clandestine and illegal purchases of lands from the Indians. Passed in the year seventeen hundred and one. An Act for regulating the size of bricks. Passed in the year seventeen hundred and eleven. An Act directing how meetings of proprietors of lands lying in common, may be called. Passed in the year seventeen hundred and thirteen. An Act in addition to the Act for preventing abuses to the Indians, made in the twelfth year of King William. Passed in the year seventeen hundred and eighteen. An Act for preventing abuses in distilling of rum and other strong liquors, with leaden heads or pipes. Passed in the year one thousand seven hundred and twenty three. An Act for explaining an Act, entitled, "An Act to prevent and make void clandestine and illegal purchases of lands from the Indians," so far as relates to the devise or bequest of any real estate by the last will and testament of any Indians. Passed in the year one thousand seven hundred and forty seven. An Act to prevent bribery and corruption. Passed in the year one thousand seven hundred and fifty eight. An Act against treason and misprision of treason, and for regulating trials in such cases, and for directing the mode of exe-

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CH. 180.  cutting judgments against persons attainted of felony. Passed in the year one thousand seven hundred and seventy seven. An Act in addition to an Act, entitled, "An Act against treason, misprision of treason, and concealment of treason, and for regulating trials in such cases, and for directing the mode of executing judgments against persons attainted of felony." Passed June twenty fifth in the year one thousand seven hundred and seventy nine. An Act prescribing the form of the writ of audita querela, and of the proceedings thereupon. Passed May eighteenth in the year one thousand seven hundred and eighty one. An Act against blasphemy. Passed July third, in the year seventeen hundred and eighty two. An Act directing and regulating the process of outlawry. Passed October second in the year seventeen hundred and eighty\* two. An Act for the repealing of one Act of this Commonwealth, made and passed on third day of May last, entitled, "An Act providing a speedy method of recovering debts and for preventing unnecessary costs attending the same; and for making other provision which may better answer the ends designed by the said Act. Passed October nineteenth in the year one thousand seven hundred and eighty two. An Act to compel executors living without the Commonwealth to settle their accounts; and to oblige administrators and guardians not being inhabitants of this Commonwealth, to give bonds with proper sureties for the performance of the duties of their trust. Passed October twenty third in the year one thousand seven hundred and eighty two. An Act for apprehending and sending for trial, persons charged with having committed crimes in some other State, and to authorize the officers of Justice of the other States to continue the execution of their precepts within this State, when necessary. Passed November seventh in the year one thousand seven hundred and eighty two. An Act for encouraging the killing of wolves. Passed twenty first of February in the year one thousand seven hundred and eighty three. An Act more effectually to enable Constables and Collectors of taxes, to collect assessments in certain cases. Passed March twentieth in the year one thousand seven hundred and eighty three. An Act to provide for collection of taxes in

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cases where the Constables or Collectors appointed for that purpose have removed or may remove themselves out of this Commonwealth. Passed July fifth in the year one thousand seven hundred and eighty three. An act for regulating pilotage in the several ports in this Commonwealth. Passed July eleventh in the year one thousand seven hundred and eighty three. An act for the admeasurement of boards, and regulating the tale of shingles, clapboards, hoops and staves, and for other purposes therein mentioned. Passed July twelfth in the year one thousand seven hundred and eighty three. An act prescribing the manner of devising lands, tenements and hereditaments. Passed February sixth in the year one thousand seven hundred and eighty four. An act directing the settlement of the estates of persons deceased, and for the conveyance\* of real estates in certain cases. Passed March fourth in the year one thousand seven hundred and eighty four. An act directing the mode of transferring real estates by deed, and for preventing fraud therein. Passed March tenth in the year one thousand seven hundred and eighty four. An act empowering the Judges of Probate to appoint guardians to minors and others. Passed March tenth in the year one thousand seven hundred and eighty four. An act for the better managing lands, wharves and other real estate, lying in common. Passed March tenth in the year one thousand seven hundred and eighty four. An act for the speedy assignment of dower, and for the preventing of strip and waste by tenants therein. Passed March eleventh in the year one thousand seven hundred and eighty four. An act for the more easy partition of lands or other real estate. Passed March eleventh in the year one thousand seven hundred and eighty four. An act describing the power of Justices of the Peace in civil actions. Passed March eleventh in the year one thousand seven hundred and eighty four. An act describing the duty and power of Coroners. Passed March twelfth in the year one thousand seven hundred and eighty four. An act defining the general powers and duties, and regulating the office of Sheriffs. Passed March twelfth, in the year one thousand seven hundred and eighty four. An act vesting certain powers in Justices of the Peace in criminal cases.

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**CH. 180.** Passed March sixteenth in the year one thousand seven hundred and eighty four. An act in addition to an act, entitled "An act for the admeasurement of boards, and regulating the tale of shingles, clapboards, hoops and staves, and for other purposes therein mentioned." Passed March sixteenth in the year one thousand seven hundred and eighty four. An act for the restraining the taking of excessive usury. Passed March sixteenth in the year one thousand seven hundred and eighty four. An act directing the issuing, extending and serving of executions. Passed March seventeenth in the year one thousand seven hundred and eighty four. An act prescribing the method of satisfying judgments in favor of this Commonwealth. Passed March seventeenth in the year one thousand seven hundred and eighty four. An act to authorize the Courts of Law to enter\* up judgment against the goods and estate of deceased persons, when the executor or administrator neglects or refuses to prosecute or defend. Passed March seventeenth in the year one thousand seven hundred and eighty four. An act for the more safe keeping the registry of deeds and conveyances of land, and for appointing the time and manner of choosing Registers. Passed March seventeenth in the year one thousand seven hundred and eighty four. An act to enable the inhabitants of the several towns and plantations within this Commonwealth to ascertain from time to time the amount of monies received by their respective Collectors of public taxes, and what payments they have made to the Treasurer of the Commonwealth. Passed March twenty third in the year one thousand seven hundred and eighty four. An act for the distribution of insolvent estates. Passed June fifteenth, in the year one thousand seven hundred and eighty four. An act directing the proceedings against forcible entry and detainer. Passed June thirtieth in the year one thousand seven hundred and eighty four. An act regulating bail in civil actions. Passed June thirtieth in the year one thousand seven hundred and eighty four. An act prescribing forms of writs in civil causes, and directing the mode of proceeding therein. Passed October thirtieth in the year one thousand seven hundred and eighty four. An act regulating the ex-

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portation of flax seed, potash, pearlash, beef, pork, barrelled fish, and dried fish. Passed November ninth in the year one thousand seven hundred and eighty four. An act against adultery, polygamy and lewdness. Passed February seventeenth in the year one thousand seven hundred and eighty five. An act for providing and regulating of prisons. Passed February twenty first in the year one thousand seven hundred and eighty five.† An act to prevent the destroying and murdering of bastard children. Passed February twenty sixth in the year one thousand seven hundred and eighty five. An act against selling unwholesome provisions. Passed March ninth in the year one thousand seven hundred and eighty five. An act in addition to an act prescribing forms of writs in civil causes and directing the mode of proceeding therein. Passed March fourteenth in the year one thousand seven\* hundred and eighty five. An act directing the process in habeas corpus. Passed March sixteenth in the year one thousand seven hundred and eighty five. An act for preventing common nuisances. Passed June seventh in the year one thousand seven hundred and eighty five. An act against hawkers, pedlars and petty chapmen. Passed June ninth in the year one thousand seven hundred and eighty five. An act providing a speedy method for doing justice, when through mistake executions are levied on real estate not belonging to the debtors. Passed June fourteenth in the year one thousand seven hundred and eighty five. An act for the filing and recording of wills proved without this government, and for taking affidavits in writing for the probate of wills in certain cases. Passed June twenty ninth in the year one thousand seven hundred and eighty five. An act giving remedies in equity. Passed November fourth in the year one thousand seven hundred and eighty five. An act regulating the admission of Attornies. Passed November fourth in the year one thousand seven hundred and eighty five. An act for regulating the exportation of tobacco and butter and the weight of onions in bunches, and the size of lime casks. Passed November eighth in the year one thousand seven hundred and eighty five. An act for the more effectually preventing of trespasses in divers cases. Passed

[†See ch. 181, vol. 3, p. 1.]

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**CH. 180.** November twenty third in the year one thousand seven hundred and eighty five. An act empowering the Selectmen of such towns where there may be fire engines, to appoint engine men, and repealing the laws heretofore made for that purpose. Passed February seventh in the year one thousand seven hundred and eighty six. An act for enforcing the speedy payment of rates and taxes, and directing the process against deficient Constables and Collectors. Passed February sixteenth in the year one thousand seven hundred and eighty six. An act for regulating the proceedings in actions of account. Passed February seventeenth in the year one thousand seven hundred and eighty six. An act for the choice and appointment of Assessors and for assigning their powers and authority. Passed February twentieth in the year one thousand seven hundred and eighty six. An act for the better securing and rendering more effectual, grants\* and donations to pious and charitable uses. Passed February twentieth in the year one thousand seven hundred and eighty six. An act for regulating fences. Passed February twenty first in the year one thousand seven hundred and eighty six. An act concerning general and common fields. Passed February twenty fourth in the year one thousand seven hundred and eighty six. An act to prevent gaming for money, or other property. Passed March fourth in the year one thousand seven hundred and eighty six. An act to prevent tenants in common, joint tenants and coparceners from committing waste, and for making partition of their interests, and also directing how joint tenancies shall be created. Passed March ninth in the year one thousand seven hundred and eighty six. An act for the punishment of fornication, and for the maintenance of bastard children. Passed March fifteenth in the year one thousand seven hundred and eighty six. An act for regulating marriage and divorce. Passed March sixteenth in the year one thousand seven hundred and eighty six. An act for the choice and appointment of Collectors of rates and taxes, and for ascertaining their power and duty. Passed March sixteenth, in the year one thousand seven hundred and eighty six. An act for regulating towns, setting forth their power, and for



the choice of town officers, and for repealing all laws heretofore made for that purpose. Passed March twenty third in the year one thousand seven hundred and eighty six. An act directing the time and manner of appointing county Treasurers. Passed March twenty third in the year one thousand seven hundred and eighty six. An act for the orderly solemnization of marriages. Passed June twenty second in the year one thousand seven hundred and eighty six. An act for rendering the decision of civil causes as speedy and as little expensive as possible. Passed July seventh in the year one thousand seven hundred and eighty six. An act for establishing rules and articles for governing the troops stationed in forts and garrisons within this Commonwealth; and also the Militia or any part thereof when called into actual service. Passed October twenty fourth in the year one thousand seven hundred and eighty six. An act to prevent routs, riots, and tumultuous assemblies, and the evil consequences thereof.\* Passed October twenty eighth in the year one thousand seven hundred and eighty six. An act for the limitation of personal actions, and for avoiding suits at law. Passed February thirteenth in the year one thousand seven hundred and eighty seven. An act in addition to the act for the more easy partition of real estate. Passed March the eleventh one thousand seven hundred and eighty four. Passed February fourteenth in the year one thousand seven hundred and eighty seven. An act for regulating the proceedings on probate bonds in the Courts of common law, and directing their form in the Supreme Court of Probate. Passed February fifteenth in the year one thousand seven hundred and eighty seven. An act for the more safe keeping the records of the several Courts of Justice, and the records of deeds within this government. Passed February sixteenth in the year one thousand seven hundred and eighty seven. An act establishing the right to, and the form of the writ de homine replegiando, or writ for replevying a man. Passed February nineteenth in the year one thousand seven hundred and eighty seven. An act for the more speedy and effectual suppression of tumults and insurrections in the Commonwealth. Passed February twentieth in

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CH. 180. the year one thousand seven [hundred] and eighty seven. An act directing the method for laying out highways. Passed February twenty seventh in the year one thousand seven hundred and eighty seven. An act for the due regulation of licensed houses. Passed February twenty eighth in the year one thousand seven hundred and eighty seven. An act making provision for the repair and amendment of highways. Passed March fifth in the year one thousand seven hundred and eighty seven. An act in addition to an act made in the year of our Lord one thousand seven hundred and eighty four, entitled "An act directing the mode of transferring real estates, by deed, and for preventing fraud therein." Passed June twenty eighth in the year one thousand seven hundred and eighty seven. An act for enabling proprietors of private ways and bridges to repair them in equal proportion. Passed November twelfth in the year one thousand seven hundred and eighty seven. An act for the further regulating the assize of barrel beef and pork. Passed November\* fourteenth in the year one thousand seven hundred and eighty seven. An act authorizing the Justices of the Supreme Judicial Court to license the sale of real estate by married women, in certain cases, and for other purposes in the act mentioned. Passed November twenty first in the year one thousand seven hundred and eighty seven. An act in addition to an act passed March sixteenth in the year of our Lord one thousand seven hundred and eighty six, entitled "An act for the choice and appointment of Collectors of rates and taxes, and for ascertaining their power and duty." Passed March twenty six in the year one thousand seven hundred and eighty eight. An act for suppressing and punishing of rogues, vagabonds, common beggars and other idle, disorderly and lewd persons. Passed March twenty sixth, in the year one thousand seven hundred and eighty eight. An act to prevent the exportation of green or unmanufactured calf skins, out of this Commonwealth by land or water. Passed March thirty first, in the year of our Lord one thousand seven hundred and eighty eight. And act empowering the Justices of the Supreme Judicial Court to grant writs of review in certain cases. Passed



June eighteenth in the year one thousand seven hundred and eighty eight. An act to prevent fraud and perjury. Passed June nineteenth, in the year one thousand seven hundred and eighty eight. An act for the ease of the citizens concerning actions upon penal statutes. Passed June nineteenth in the year one thousand seven hundred and eighty eight. An act to confirm the doings of Justices of the Peace whose commissions have expired, or may hereafter expire and be again renewed. Passed June twentieth in the year one thousand seven hundred and eighty eight. An act in addition to the act, “for regulating the proceedings on probate bonds in the Courts of Common law and directing the form in the Supreme Court of Probate.” Passed June twentieth in the year one thousand seven hundred and eighty eight. An act for erecting work houses for the reception and employment of the idle and indigent. Passed January tenth in the year one thousand seven hundred and eighty nine. An act to prevent damage by horses going at large. Passed February third in the year one thousand seven\* hundred and eighty nine. An act directing the mode of prosecuting writs of review, after the death of any or all of the parties in the original suit. Passed February ninth in the year one thousand seven hundred and eighty nine. An act authorizing executors and administrators to make sale of real estate mortgaged to their testators or intestates, and such as they shall take in execution in certain cases. Passed February eleventh in the year one thousand seven hundred and eighty nine. An act authorizing Courts having criminal jurisdiction, to award in certain cases conditional sentences against offenders. Passed February thirteenth, in the year one thousand seven hundred and eighty nine. An act respecting lost goods, and stray beasts. Passed February thirteenth, in the year one thousand seven hundred and eighty nine. An act for regulating swine. Passed February thirteenth in the year one thousand seven hundred and eighty nine. An act declaring the causes for which cattle may be impounded, the manner how they shall be proceeded with in such cases, and for preventing rescue and pound breach. Passed February fourteenth in the year one thousand seven hundred and eighty

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nine. An act for limiting the time within which suits may be prosecuted against executors and administrators and for perpetuating the evidence of notice given by them, and by guardians and others, respecting the sale of real estate. Passed February fourteenth in the year one thousand seven hundred and eighty nine. An act directing an equal distribution of the estates of intestates. Passed June eighth in the year one thousand seven hundred and eighty nine. An act further to enable Constables and Collectors of taxes to complete their collections in certain cases. Passed June fifteenth in the year one thousand seven hundred and eighty nine. An act authorizing the settlement of the claims of executors and administrators in the Probate Court by referees. Passed June twenty second in the year one thousand seven hundred and eighty nine. An act to provide for the instruction of youth, and for the promotion of good education. Passed June twenty fifth in the year one thousand seven hundred and eighty nine. An act in addition to the act regulating the exportation of flax seed and other articles. Passed on the ninth day\* of November Anno Domini one thousand seven hundred and eighty four. Passed June twentieth in the year one thousand seven hundred and eighty nine. An act prescribing the form, and directing the mode of process, to be adopted in replevying of cattle or beasts distrained, and also of goods and chattels. Passed June twenty fourth, one thousand seven hundred and eighty nine. An act to provide for the safe keeping of all prisoners committed under the authority of the United States in the several gaols within this Commonwealth. Passed February twenty sixth in the year one thousand seven hundred and ninety. An act empowering commissioners appointed to receive and examine the claims of the creditors to insolvent estates, to require of, and administer to them an oath or affirmation, the better to discover the truth of their claims. Passed March third in the year one thousand seven hundred and ninety. An act authorizing particular persons, in certain cases, to prosecute and defend suits at law. Passed March sixth in the year one thousand seven hundred and ninety. An act in addition to, and to explain an act passed the tenth day of March in the

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year of our Lord one thousand seven hundred and eighty four, CH. 180.  
entitled, "An act for the better managing of lands, wharves,   
and other real estate lying in common." Passed March  
ninth in the year one thousand seven hundred and ninety one.  
An act for the preservation and encouragement of the fur  
trade within this Commonwealth. Passed June tenth in the  
year one thousand seven hundred and ninety one. An Act  
to ascertain the quality of pot and pearl ashes, and for the  
more effectual inspection of the same. Passed June seven-  
teenth in the year one thousand seven hundred and ninety  
one. An act in addition to an act, entitled, "An act for  
the more safe keeping the Registry of deeds and conveyan-  
ces of land, and for appointing the time and manner of  
choosing Registers." Passed June eighteenth in the year  
one thousand seven hundred and ninety one. An act direct-  
ing the manner in which inquests of office shall be taken to  
revest real estate in the Commonwealth, or to entitle the  
Commonwealth thereto. Passed June eighteenth in the year  
one thousand seven hundred and ninety one. An\* act in [•786]  
addition to an act, entitled, "An act empowering the Justices  
of the Supreme Judicial Court to grant writs of review, in  
certain cases." Passed June eighteenth in the year one thou-  
sand seven hundred and ninety one. An act in addition to the  
several laws now in force providing for the collection of tax-  
es. Passed February third in the year one thousand seven  
hundred and ninety two. An act in addition to, and for re-  
pealing and altering part of an act, entitled "An act for lim-  
iting the time within which suits may be prosecuted against  
executors and administrators, and for perpetuating the evi-  
dence of notice given by them, and by guardians and others  
respecting the sale of real estate." Passed February four-  
teenth in the year one thousand seven hundred and ninety  
two. An act to prevent damage by mischievous dogs. Pass-  
ed February twenty fifth in the year one thousand seven hun-  
dred and ninety two. An act providing for the payment of  
costs in criminal prosecutions, and for preventing unneces-  
sary costs therein. Passed March eighth in the year one  
thousand seven hundred and ninety two. An act providing  
for the observation of the Lord's day, and repealing several



**CH. 180.** laws heretofore made for that purpose. Passed March eighth in the year one thousand seven hundred and ninety two. An act providing a more easy and simple method than is now in use of barring estates in tail in lands and for making the same liable to the payment of the debts of the tenant in tail. Passed March eighth in the year one thousand seven hundred and ninety two. An act for making the certificates of certain officers evidence in criminal cases. Passed March eighth in the year one thousand seven hundred and ninety two. An act authorizing Coroners to execute writs and precepts when the office of Sheriff may be vacant. Passed June twenty eighth in the year one thousand seven hundred and ninety two. An act in addition to an act for the due regulation of licensed houses. Passed November seventeenth in the year one thousand seven hundred and ninety two. An act admitting inhabitants of towns, and certain other corporations to be witnesses, as well for as against such towns and corporations, in suits at law. Passed February thirteenth in the year one thousand seven hundred and\* ninety three. An act for giving liberty to plead the general issue, and give the special matter in evidence, in certain cases. Passed February twenty fifth in the year one thousand seven hundred and ninety three. An act for providing hospitals for inoculation, and preventing infection from the small pox, and for repealing several acts heretofore made for that purpose. Passed March fifteenth in the year one thousand seven hundred and ninety three. An act in addition to an act, entitled, "An Act to ascertain the quality of pot and pearl ashes, and for the more effectual inspection of the same," passed the seventeenth day of June one thousand seven hundred and ninety one. Passed March twenty sixth in the year one thousand seven hundred and ninety three. An act in addition to an act, entitled, "An Act to prevent damage by horses going at large." Passed June twenty second in the year one thousand seven hundred and ninety three. An act ascertaining what shall constitute a legal settlement of any person in any town or district within the Commonwealth, so as to entitle him to support therein in case he becomes poor, and stands in need of relief; and for repealing all laws


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heretofore made respecting such settlement. Passed February eleventh in the year one thousand seven hundred and ninety four. An act to secure to owners their property in logs, masts, spars and other timber, in certain cases. Passed February twenty second in the year one thousand seven hundred and ninety four. An act prescribing the mode of recovering forfeitures of personal property liable thereto by law, and also pecuniary forfeitures. Passed February twenty second in the year one thousand seven hundred and ninety four. An act in addition to an act, entitled, "An Act for enforcing the speedy payment of rates and taxes, and directing the process against deficient Constables and Collectors." Passed February twenty sixth in the year one thousand seven hundred and ninety four. An act providing for the relief and support, employment and removal of the poor, and for repealing all former laws made for those purposes. Passed February twenty sixth in the year one thousand seven hundred and ninety four. An act in addition to an act for the limitation of personal actions and for avoiding suits at law,\* passed the thirteenth day of February, one thousand seven hundred and eighty seven. Passed February twenty seventh in the year one thousand seven hundred and ninety four. An act in addition to an act, entitled, "An act for the distribution of insolvent estates." Passed June twentieth in the year one thousand seven hundred and ninety four. An act in addition to an act, entitled, "An act concerning general and common fields," passed in February in the year of our Lord one thousand seven hundred and eighty six. Passed February eighteenth in the year one thousand seven hundred and ninety five. An act in addition to an act, entitled, "An act providing for the payment of costs in criminal prosecutions, and for preventing unnecessary costs therein." Passed February twenty seventh in the year one thousand seven hundred and ninety five. An act making provision for the erecting guide posts upon public roads. Passed February twenty eighth in the year one thousand seven hundred and ninety five. An act to secure to masters and mistresses, as well as to apprentices and minor servants, bound by deed, their mutual privileges. Passed February twenty eighth in

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**CH. 180.**  the year one thousand seven hundred and ninety five. An act to enable creditors to receive their just demands out of the goods, effects and credits of their debtors, when the same cannot be attached by the ordinary process of law. Passed February twenty eighth in the year one thousand seven hundred and ninety five. An act prescribing the duty of Constables and Collectors in certain cases, previous to the advertisement of non-resident proprietor's lands for sale, for non-payment of taxes, and for perpetuating the evidence of posting notifications previous to such sales. Passed February twenty eighth in the year one thousand seven hundred and ninety five. An act to regulate the sale of goods at public vendue and to repeal all laws heretofore made for that purpose. Passed June sixteenth in the year one thousand seven hundred and ninety five. An act establishing and regulating the fees of the several officers and other persons hereafter mentioned ; and for repealing the laws heretofore made for that purpose. Passed February thirteenth in the year one thousand seven hundred and ninety six. An act relating to the place of trial, standing mute, and\* challenges in certain capital cases. Passed February fifteenth in the year one thousand seven hundred and ninety six. An act directing that pews and rights in houses of public worship shall be considered as real estate, and for registering the same. Passed February twenty third in the year one thousand seven hundred and ninety six. An act for regulating elections. Passed February twenty fourth in the year one thousand seven hundred and ninety six. An act directing proceedings in actions of debt on judgments. Passed February twenty sixth in the year one thousand seven hundred and ninety six. An act for appointing commissioners of sewers, and making provision for the better improvement of low lands in certain cases. Passed February twenty sixth in the year one thousand seven hundred and ninety six. An act to enable Sheriffs, deputy Sheriffs and Constables to require aid in the execution of their respective offices in criminal cases. Passed February twenty-sixth in the year one thousand seven hundred and ninety six. An act for recording births and deaths by the Clerks of towns and districts. Pas-

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sed March twenty sixth in the year one thousand seven hundred and ninety six. An act to prevent the destruction of oysters and other shell fish in this Commonwealth. Passed February twenty sixth in the year one thousand seven hundred and ninety six. An act for the support and regulation of mills. Passed February twenty seventh in the year one thousand seven hundred and ninety six. An act relating to actions of ejectment and disclaimer and for preventing strip and waste pending such actions. Passed February twenty seventh in the year one thousand seven hundred and ninety six. An act to repeal all the existing excise acts, and to provide for the expenses of justice in the several counties. Passed February twenty seventh in the year one thousand seven hundred and ninety six. An act to amend the act directing the manner in which inquests of office shall be taken to revest real estate in the Commonwealth or to entitle the Commonwealth thereto. Passed June eleventh in the year one thousand seven hundred and ninety six. An act in further addition to an act, entitled, "an act concerning general and common fields." Passed June fifteenth in the year one thousand seven hundred and ninety six. An\* act for regulating ferries. Passed February fourteenth in the year one thousand seven hundred and ninety seven. An act for regulating drains and common shores. Passed February twentieth in the year one thousand seven hundred and ninety seven. An act in addition to the several acts now in force respecting highways. Passed February twenty eighth in the year one thousand seven hundred and ninety seven. An act to regulate the going at large of sheep and rams and he-goats at certain seasons of the year. Passed March seventh in the year one thousand seven hundred and ninety seven. An act to prevent fraud in fire wood, bark or coal, exposed to sale. Passed March seventh in the year one thousand seven hundred and ninety seven. An act for the amendment of an act, entitled, "an act for regulating swine," made and passed on the thirteenth day of February, in the year of our Lord one thousand seven hundred and eighty nine. Passed March seventh in the year one thousand seven hundred and ninety seven. An act for the limitation of actions against Sheriffs



CH. 180.  for the misconduct and negligence of their deputies. Passed March eighth in the year one thousand seven hundred and ninety seven. An act for keeping watches and wards in towns, and for preventing disorders in streets and public places. Passed March tenth in the year one thousand seven hundred and ninety seven. An act for the extinguishment of fire and to direct the proceedings thereat. Passed March tenth in the year one thousand seven hundred and ninety seven. An act in addition to an act, entitled, "An act providing for the due observation of the Lord's day, and repealing the several laws heretofore made for that purpose." Passed March eleventh in the year one thousand seven hundred and ninety seven. An act to prevent the spreading of contagious sickness. Passed June twenty second in the year one thousand seven hundred and ninety seven. An act for removing doubts which have arisen in the construction of an act passed in the year of our Lord one thousand seven hundred and eighty four, entitled, "An act describing the power of Justices of the Peace." Passed June twenty second in the year one thousand seven hundred and ninety seven. An act to exempt the people called Quakers, from paying taxes for the support\* of public worship. Passed twenty third of June in the year one thousand seven hundred and ninety seven. An act in addition to an act, entitled, "An act directing the method for laying out highways." Passed June twenty third in the year one thousand seven hundred and ninety seven. An act prescribing the mode of taking depositions, and administering oaths and affirmations. Passed February third in the year one thousand seven hundred and ninety eight. An act relating to suits against defendants out of the State also to giving notice to defendants sued. Passed February seventeenth in the year one thousand seven hundred and ninety eight. An act in addition to an act, entitled, "An act for suppressing rogues, vagabonds, common beggars and other idle, disorderly and lewd persons." Passed February twenty seventh in the year one thousand seven hundred and ninety eight. An act in addition to an act, entitled, "An act to enable creditors to receive their just demands, out of the goods, effects and credits of their debtors when the same



cannot be attached by the ordinary process of law." Passed June sixteenth in the year one thousand seven hundred and ninety eight. An act more effectually to prevent the pernicious practice of gaming. Passed June twenty seventh in the year one thousand seven hundred and ninety eight. An act in addition to the several laws regulating elections. Passed June twenty ninth in the year one thousand seven hundred and ninety eight. An act to prevent profane cursing and swearing. Passed June twenty ninth in the year one thousand seven hundred and ninety eight. An act in addition to an act made and passed in the year of our Lord one thousand seven hundred and ninety one, entitled, "An act directing the manner in which inquests of office shall be taken to revest real estate in the Commonwealth or to entitle the Commonwealth thereto. Passed February sixth in the year one thousand seven hundred and ninety nine. An act in addition to an act, entitled, "An act to prevent damage by mischievous dogs," passed February twenty fifth one thousand seven hundred and ninety two. Passed February nineteenth in the year one thousand seven hundred and ninety nine. An act enabling proprietors of aqueducts to manage the same. Passed February\* twenty first in the year one thousand seven hundred and ninety nine. An act providing for the safe keeping the records of the several Notaries Public in this Commonwealth. Passed February twenty sixth in the year one thousand seven hundred and ninety nine. An act specifying the evidence to accompany accounts exhibited for the support of the poor of the Commonwealth. Passed February twenty sixth in the year one thousand seven hundred and ninety nine. An act in addition to an act, entitled, "An act for giving remedies in equity." Passed March first in the year one thousand seven hundred and ninety nine. An act authorizing the Courts of General Sessions of the Peace to liberate poor convicts from prison, and to dispose of them in service, for payment of costs of prosecution. Passed June eighteenth in the year one thousand seven hundred and ninety nine. An act to explain an act, entitled "An act against hawkers, pedlars and petty chapmen." Passed June twenty first in the year one thousand seven hundred and

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ninety nine. An act entitled, "An act to prevent fraud in fire wood, bark or coal exposed to sale," made and passed March seventh one thousand seven hundred and ninety seven. Passed June twenty second in the year one thousand seven hundred and ninety nine. An act to regulate the weighing of beef and pork. Passed June twenty second in the year one thousand seven hundred and ninety nine. An act to restrain unincorporated banking associations and to prevent the issuing small bank notes. Passed June twenty second in the year one thousand seven hundred and ninety nine. An act in addition to an act, entitled, "An act for enforcing the speedy payment of rates, and directing the process against deficient Constables and Collectors." Passed February twenty fifth in the year one thousand eight hundred. An act giving remedy in law against executors and administrators of deceased debtors, in joint contracts. Passed February twenty sixth in the year one thousand eight hundred. An act in addition to an act, entitled, "An act to prevent the spreading of contagious sickness." Passed February twenty sixth in the year one thousand eight hundred. An act for the due regulation of weights and measures. Passed February twenty sixth in the year one thousand eight hundred. An act\* empowering towns to restrain cattle from running at large within their several limits. Passed February twenty sixth in the year one thousand eight hundred. An act to encourage the manufacture of leather, boots, half boots, shoes, pumps, sandals, slippers and golo shoes, and to prevent fraud therein. Passed February twenty sixth in the year one thousand eight hundred. An act to regulate the manufacture of nails within this Commonwealth, and to repeal all laws heretofore made for that purpose. Passed February twenty eighth in the year one thousand eight hundred. An act in addition to an act, entitled, "An act to provide for the instruction of youth, and for the promotion of good education." Passed February twenty eighth in the year one thousand eight hundred. An act to regulate the inspection of beef intended to be exported from this Commonwealth. Passed March fourth in the year one thousand eight hundred. An act in addition to an act, entitled "An act to prevent common



nuisances.” Passed March fourth in the year one thousand eight hundred. An act in addition to an act, entitled, “an act for the support and regulation of mills.” Passed March fourth in the year one thousand eight hundred. An act to empower Assessors in certain cases to renew warrants to Constables and Collectors. Passed March fourth in the year one thousand eight hundred. An act to ascertain the quality of butter, and for the more effectual inspection of the same. Passed March fourth in the year one thousand eight hundred. An act providing for the public worship of God, and other purposes therein mentioned, and for repealing the laws heretofore made relating to this subject. Passed March fourth in the year one thousand eight hundred. An act to ascertain the quality of hogs lard and making further provision for the inspection of butter. Passed June seventeenth in the year one thousand eight hundred. An act to authorize the use of the vibrating steelyard. Passed June seventeenth in the year one thousand eight hundred. An act in addition to an act, entitled, “an act for the support and regulation of mills.” Passed February twenty eighth in the year one thousand seven hundred and ninety eight. An act in addition to an act, entitled, “an act for the due regulation of weights and measures.”\* Passed February twenty sixth in the year one thousand eight hundred and one. An act for the suppression of lotteries not authorized by law, and to prevent the sale of any tickets in such lotteries. Passed February twenty eighth in the year one thousand eight hundred and one. An act in further addition to an act, entitled, “an act to ascertain the quality of butter, and for the more effectual inspection of the same,” and to the act entitled, “an act to ascertain the quality of hogs lard, and making further provision for the inspection of butter.” Passed March third in the year one thousand eight hundred and one. An act in addition to the several acts for regulating elections. Passed March seventh in the year one thousand eight hundred and one. An act respecting boats and lighters employed in transporting stones, gravel or sand, within this Commonwealth. Passed March seventh in the year one thousand eight hundred and one. An act for regulating the manufacture and sale of bread. Passed March

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CH. 180. seventh in the year one thousand eight hundred and one.   
 ~~~~~ An act in addition to an act, entitled, "an act to secure to owners their property in logs, masts, spars and other timber, in certain cases. Passed June sixteenth in the year one thousand eight hundred and one. An act providing for the appointment of agents for demanding and receiving fugitives from justice, and for defraying the expense of transporting them from other States in the Union to this Commonwealth. Passed June the eighteenth in the year one thousand eight hundred and one. An act directing the proceedings for the speedy removal of nuisances. Passed June nineteenth in the year one thousand eight hundred and one. An act in addition to an act, entitled, "an act to regulate the inspection of beef, intended to be exported from this Commonwealth. Passed June nineteenth in the year one thousand eight hundred and one. An act more effectually to secure fire engines from being injured. Passed February eighth in the year one thousand eight hundred and two. An act for carrying into execution, more effectually the bye-laws of the several towns within this Commonwealth. Passed March third in the year one thousand eight hundred and two. An act to authorize the Governor in certain cases to offer\* a reward for the apprehending and securing persons escaping from prison, and for other purposes. Passed March eighth in the year one thousand eight hundred and two. An act to regulate the inspection of pork intended to be exported from this Commonwealth. Passed March eleventh in the year one thousand eight hundred and two. An act in addition to an act enabling proprietors of private ways and bridges to repair them in equal proportions. Passed March eleventh in the year one thousand eight hundred and two. An act for preserving and authenticating the records of Justices in certain cases. Passed March eleventh in the year one thousand eight hundred and two. An act in addition to an act, entitled, "An act authorizing the Courts of General Sessions of the Peace to liberate poor convicts from prison, and to dispose of them in service for payment of costs of prosecution." Passed June fourth in the year one thousand eight hundred and two. An act in addition to an act, passed in the


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year of our Lord eighteen hundred, entitled, "An act in addition to an act to provide for the instruction of youth and the promotion of good education." Passed June twenty third in the year one thousand eight hundred and two. An act in addition to an act, entitled, "An act in addition to an act, passed the nineteenth of June one thousand eight hundred and one, to regulate the inspection of beef intended to be exported from this Commonwealth." Passed June twenty third in the year one thousand eight hundred and two. An act in further addition to an act, entitled, "An act for supporting and punishing rogues, vagabonds, common beggars and other idle, disorderly and lewd persons." Passed June twenty third in the year one thousand eight hundred and two. An act in addition to an act, entitled, "An act directing the mode of transferring real estates by deed, and for preventing frauds therein." Passed June twenty third in the year one thousand eight hundred and two. An act in addition to and for the amendment of an act, entitled, "An act to regulate the manufacture of nails within this Commonwealth," passed the twenty eighth day of February one thousand eight hundred. Passed March fourth in the year one thousand eight hundred and three. An act in addition to an act, entitled, "An\* act in addition to several acts for regulating elections," and for repealing the first section of said act. Passed March seventh in the year one thousand eight hundred and three. An act in addition to an act, entitled, "An act to exempt the people called Quakers from paying taxes for the support of public worship," passed the twenty third day of June, in the year of our Lord one thousand seven hundred and ninety seven. Passed March eighth one thousand eight hundred and three. An act to prevent the wilful destruction and casting away of ships and cargoes. Passed March eighth in the year one thousand eight hundred and three. An act in addition to, and amendment of an act, entitled, "An act directing the method of laying out highways." Passed March eighth in the year one thousand eight hundred and three. An act to regulate the manufacture of chocolate, in this Commonwealth, to prevent deception in the quality and exportation thereof, and to repeal a law for that purpose, passed

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**CH 180.** March the eighth one thousand eight hundred and three.  Passed June twenty second in the year one thousand eight hundred and three. An act respecting conditional pardons. Passed March sixth in the year one thousand eight hundred and four. An act in addition to an act, entitled, "An act regulating bail in civil actions." Passed March seventh in the year one thousand eight hundred and four. An act regulating the taking of mackerel and to prevent the destruction of the same. Passed March eighth in the year one thousand eight hundred and four. An act in addition to an act, entitled, "An act for the due regulation of weights and measures." Passed March ninth in the year one thousand eight hundred and four. An act in addition to an act, entitled, "An act to empower towns to restrain cattle from running at large within their several limits." Passed November twenty first in the year one thousand eight hundred and four. An act to restrain the issuing of printed promissory notes of certain denominations, and for other purposes. Passed February eighteenth in the year one thousand eight hundred and five. An act in addition to an act, entitled, "An act providing a more easy and simple method than is now in use of barring estates tail in lands and for making the same liable to the payment of the\* debts of the tenant in tail." Passed February eighteenth in the year one thousand eight hundred and five. An act to provide for the proof of fire arms manufactured within this Commonwealth. Passed March eighth in the year one thousand eight hundred and five. An act directing the mode of attaching on mesne process, and selling by execution shares of debtors in incorporated companies. Passed March eighth in the year one thousand eight hundred and five. An act in addition to an act, entitled, "An act to secure to owners their property in logs, masts, spars and other timber in certain cases." Passed March fourteenth in the year one thousand eight hundred and five. An act providing for the regular discharge of mortgages made to the Commonwealth. Passed March fifteenth in the year one thousand eight hundred and five. An act in addition to an act, entitled, "An act, in addition to an act, entitled, an act, in addition to the several acts for regulating elections, and for repealing the

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first section of said act." Passed March fifteenth in the year one thousand eight hundred and five. An act against forgery and counterfeiting. Passed March fifteenth in the year one thousand eight hundred and five. An act providing for the punishment of the crimes of murder and manslaughter, felonious maims and assaults, and duelling, and for the prevention thereof. Passed March fifteenth in the year one thousand eight hundred and five. An act in addition to an act to regulate the inspection and exportation of pork, passed March the eleventh, one thousand eight hundred and two, and to repeal a part of the same. Passed March fifteenth in the year one thousand eight hundred and five. An act defining the general powers and duties of turnpike corporations. Passed March sixteenth in the year one thousand eight hundred and five. An act providing for the punishment of incendiaries, and the perpetrators of other malicious mischiefs. Passed March sixteenth in the year one thousand eight hundred and five. An act against sodomy and bestiality. Passed March sixteenth in the year one thousand eight hundred and five. An act to prevent the circulation of private notes, bills, orders and checks under five dollars. Passed March sixteenth in the year one thousand eight\* hundred and five. An act providing for the punishment of the crimes of robbery and other larcenies, and for the prevention thereof. Passed March sixteenth in the year one thousand eight hundred and five. An act for limiting the times within which writs of error shall be brought for the reversion of any judgments. Passed February fifteenth in the year one thousand eight hundred and six. An act prescribing the manner of proving private Acts, and Resolves of this Commonwealth in Courts of Law. Passed February fifteenth in the year one thousand eight hundred and six. An act to prevent damage from firing crackers, squibs, serpents and rockets, within this Commonwealth. Passed March fourth in the year one thousand eight hundred and six. An act in addition to an act, entitled, "an act regulating marriage and divorce." Passed March seventh in the year one thousand eight hundred and six. An act to increase the fees of Grand and Petit Jurors and witnesses in criminal



**CH. 180.** cases. Passed March seventh in the year one thousand eight hundred and six. An act in addition to an act, entitled "an act authorizing the Courts of General Sessions of the Peace to liberate poor convicts from prison, and dispose of them in service for payment of costs of prosecution." Passed March seventh in the year one thousand eight hundred and six. An act to enable the proprietors of Social Libraries to manage the same. Passed March eighth in the year one thousand eight hundred and six. An act in addition to an act entitled "an act empowering the selectmen of such towns where there may be fire engines, to appoint engine men, and repealing the laws heretofore made for that purpose." Passed March eighth in the year one thousand eight hundred and six. An act regulating the descent and distribution of intestate estates. Passed March twelfth in the year one thousand eight hundred and six. An act providing for the punishment of the crime of rape, and for the prevention thereof. Passed March thirteenth in the year one thousand eight hundred and six. An act for preventing public stage plays, interludes and other theatrical entertainments, in certain cases. Passed March thirteenth in the year one thousand eight hundred and six. An act to exempt certain goods and chattels\* of debtors from attachment and execution. Passed March thirteenth in the year one thousand eight hundred and six. An act for regulating the proceedings of suits upon Sheriff's bonds, for the use of any person or persons who are or may be entitled to the benefit of the same. Passed March thirteenth in the year one thousand eight hundred and six. An act providing for the punishment of the crimes of burglary and other breaking and entering of buildings. Passed March thirteenth in the year one thousand eight hundred and six. An act to provide for the inspection of hops for exportation. Passed June twenty fourth in the year one thousand eight hundred and six. An act in addition to the several acts regulating elections. Passed June twenty fourth in the year one thousand eight hundred and six. An act in addition to an act entitled, "an act describing the duty and power of Coroners," and for repealing an act passed the seventh day of March eighteen hundred and six. Passed February sixth

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in the year one thousand eight hundred and seven. An act in addition to an act, entitled, "an act to enable the proprietors of Social Libraries to manage the same." Passed February twenty fourth in the year one thousand eight hundred and seven. An act enlarging the powers and duties of the guardians of persons who spend or waste their estates by excessive drinking, idleness, gaming or debauchery. Passed February twenty eighth in the year one thousand eight hundred and seven. An act in addition to an act, entitled, "an act to secure to owners their property in logs, masts, spars and other timber, in certain cases." Passed February twenty eighth in the year one thousand eight hundred and seven. An act in addition to an act, entitled, "an act establishing Courts of General Sessions of the Peace," passed the third day of July in the year of our Lord seventeen hundred and eighty two. Passed June nineteenth in the year one thousand eight hundred and seven. An act respecting the offices and duties of the Attorney General, Solicitor General and County Attornies. Passed June twentieth, one thousand eight hundred and seven. An act to prevent fraud and deception in curing and packing smoked alewives and herrings, and to regulate the size and quality\* of the boxes, and the exportation thereof from the Commonwealth. Passed February ninth in the year one thousand eight hundred and eight. An act to explain and amend the laws respecting Courts of General Sessions of the Peace. Passed February twenty third in the year one thousand eight hundred and eight. An act in addition to an act, entitled, "an act defining the general powers and duties of turnpike corporations." Passed March ninth in the year one thousand eight hundred and eight. An act in addition to an act, entitled, "an act describing the power of Justices of the Peace in civil actions," passed the eleventh day of March seventeen hundred and eighty four. Passed March twelfth in the year one thousand eight hundred and eight. An act in addition to several acts for the due regulation of licensed houses. Passed March twelfth in the year one thousand eight hundred and eight. An act regulating the selections, the empannelling, and the services of Grand, Traverse, and Petit Jurors, and repeal-

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CH. 180. ing such laws or clauses of laws touching these subjects so far as they are provided for by this act. Passed March twelfth in the year one thousand eight hundred and eight. An act to empower the several towns in this Commonwealth to excuse such of their inhabitants as are engine men from serving as jurors in any Court within this Commonwealth. Passed November eleventh in the year one thousand eight hundred and eight. An act in addition to an act defining the general powers and duties, and regulating the office of Sheriff. Passed February twenty fourth in the year one thousand eight hundred and nine. An act providing for the appointment of inspectors and regulating the manufactory of gun powder. Passed March first in the year one thousand eight hundred and nine. An act authorizing the several Courts of Common Pleas in this Commonwealth to allow accounts and order payment for services and expences incident to said Courts. Passed March first in the year one thousand eight hundred and nine. An act defining the general powers and duties of manufacturing corporations. Passed March third in the year one thousand eight hundred and nine. An act in addition to an act directing the process of habeas corpus. Passed March fourth in\* the year one thousand eight hundred and nine. An act in addition to an act, entitled, "An act for providing and regulating of prisons." Passed March fourth in the year of our Lord one thousand eight hundred and nine. An act to authorize Judges of Probate to remove executors, administrators and guardians in certain cases. Passed March fourth in the year one thousand eight hundred and nine. An act requiring the several incorporated banks in this Commonwealth to adopt the stereotype steel plate in certain cases, and for other purposes. Passed March fourth in the year one thousand eight hundred and nine. An act supplementary to the act, for providing and regulating of prisons. Passed June twentieth in the year one thousand eight hundred and nine. An act to enforce the payment of Bank notes. Passed June twentieth in the year one thousand eight hundred and nine. An act to regulate the manufacture and inspection of stone lime and lime casks. Passed February

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twenty seventh in the year one thousand eight hundred and ten. An act limiting the time of payment of costs allowed in criminal prosecutions, and for other purposes. Passed March third in the year one thousand eight hundred and ten. An act for regulating, governing and training the Militia of this Commonwealth. Passed March sixth in the year one thousand eight hundred and ten. An act to diffuse the benefit of inoculation for the cow pox. Passed March sixth in the year one thousand eight hundred and ten. An act in addition to an act entitled, "an act providing for the appointment of Inspectors and regulating the manufactory of gun powder." Passed March sixth in the year one thousand eight hundred and ten. An act to prevent fraud and deception in the packing of pickled fish, and to regulate the size and quality of the casks, and the sale and exportation thereof within and from this Commonwealth, and to repeal all laws heretofore made on this subject. Passed March sixth in the year one thousand eight hundred and ten. An act in addition to an act, entitled, "an act for the more speedy and effectual suppression of tumults and insurrections in the Commonwealth." Passed March sixth in the year one thousand eight hundred and ten. An act directing the place where actions by or against a county may\* be commenced and prosecuted. Passed March sixth in the year one thousand eight hundred and ten. An act in further addition to an act, entitled, "an act providing for the appointment of Inspectors, and regulating the manufactory of gun powder." Passed February twenty fifth in the year one thousand eight hundred and eleven. An act granting relief to defendants in actions of scire facias, in certain cases. Passed February twenty sixth in the year one thousand eight hundred and eleven. An act to direct officers in the levy of executions. Passed February twenty sixth in the year one thousand eight hundred and eleven. An act to provide for the location of certain reserved lands. Passed February twenty sixth in the year one thousand eight hundred and eleven. An act in addition to an act, entitled, "an act for providing and regulating of prisons." Passed February twenty eighth in the year one thousand eight hundred and eleven.

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An act further regulating divorces. Passed February twenty eighth in the year one thousand eight hundred and eleven. An act for the relief of persons who are scrupulous about taking oaths. Passed February twenty eighth in the year one thousand eight hundred and eleven. An act in addition to an act, entitled, "An act to regulate the manufacture and inspection of stone lime and lime casks, passed the twenty seventh day of February in the year of our Lord one thousand eight hundred and ten." Passed February twenty eighth in the year one thousand eight hundred and eleven. An act to enforce the satisfaction and payment of executions and warrants of distress, against certain corporations. Passed February twenty eighth in the year one thousand eight hundred and eleven. An act respecting public worship and religious freedom. Passed June eighteenth in the year one thousand eight hundred and eleven. An act providing for the appointment of Clerks of the Courts in the several counties, and for the safe keeping of the Judicial records and files, and for other purposes. Passed June eighteenth in the year one thousand eight hundred and eleven. An act regulating the choice of town officers and town meetings. Passed June eighteenth in the year one thousand eight hundred and eleven. An act supplementary to the acts respecting school districts.\* Passed June twenty first in the year one thousand eight hundred and eleven. An act to prohibit certain officers of Courts from buying promissory notes and other demands for the purpose of making a gain or profit in the collection thereof. Passed June twenty fourth in the year one thousand eight hundred and eleven. An act to direct the time and manner of exhibiting the accounts of County Treasurers, and the estimates for county taxes. Passed June twenty fifth in the year one thousand eight hundred and eleven. An act directing the manner of conveyance to be used by counties in purchasing and disposing of lands. Passed June twenty fifth in the year one thousand eight hundred and eleven. An act to regulate prisons within this Commonwealth. Passed June twenty seventh in the year one thousand eight hundred and eleven. An act defining the duties of Sheriffs, Coroners and Constables in certain cases. Passed



February thirteenth in the year one thousand eight hundred and twelve. An act subjecting the real estate of banking corporations to be taken in execution and sold at public auction, for the payment of their debts. Passed February thirteenth in the year one thousand eight hundred and twelve. An act providing for the safe keeping of the records in the offices of Register of Deeds and of the Register of Probate, in the several counties within this Commonwealth. Passed February twenty ninth in the year one thousand eight hundred and twelve. An act in addition to an act, entitled, "An act to regulate prisons within this Commonwealth." Passed February twenty ninth in the year one thousand eight hundred and twelve. An act appropriating certain fines for the repairing of highways and bridges. Passed February twenty ninth in the year one thousand eight hundred and twelve. An act supplementary to the act respecting the evidence of notice by administrators and others, of the sale of real estate. Passed June twenty second in the year one thousand eight hundred and twelve. An act respecting bailable offences. Passed June twenty second in the year one thousand eight hundred and twelve. An act imposing a tax on the banks within this Commonwealth. Passed June twenty third in the year one thousand eight hundred and twelve. An act in\* addition to an act, entitled, "an act to repeal all the existing excise acts, and to provide for the expenses of Justice in the several counties." Passed February sixteenth in the year one thousand eight hundred and thirteen. An act in addition to an act, entitled, "an act for the speedy assignment of dower, and for the preventing of strip and waste of tenants therein." Passed February twenty third in the year one thousand eight hundred and thirteen. An act in further addition to an act, entitled, "an act directing the method for laying out highways." Passed February twenty seventh in the year one thousand eight hundred and thirteen. An act in addition to an act, entitled, "an act for regulating, governing and training the Militia of this Commonwealth. Passed February twenty seventh in the year one thousand eight hundred and thirteen. An act authorizing certain punishments in cases therein mentioned. Passed February twenty seventh in the

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**CH. 180.** year one thousand eight hundred and thirteen. An act directing the mode and time of making returns of the several incorporated Banks in this Commonwealth to his Excellency the Governor and the honorable Council. Passed February twenty seventh in the year one thousand eight hundred and thirteen. An act in addition to and for repealing the first section of an act, entitled, "an act regulating the selection, the empannelling and the services of Grand, Traverse and Petit Jurors, and repealing all laws, or clauses of laws, touching these subjects, so far as they are provided for by this act." Passed February twenty seventh in the year one thousand eight hundred and thirteen. An act against perjury, and subornation of perjury. Passed February twenty seventh in the year one thousand eight hundred and eighteen [thirteen.] An act in addition to an act, entitled, "an act to prevent damage by mischievous dogs." Passed February twenty seventh in the year one thousand eight hundred and thirteen. An act in addition to, and explanation of an act, entitled, "an act establishing and regulating the fees of the several officers, and other persons hereafter mentioned, and for repealing the laws heretofore made for that purpose." Passed June tenth in the year one thousand eight hundred and thirteen. An act in addition to an act entitled, "an act subject-  
 [\*805] ing\* the real estates of banking corporations to be taken and sold at public auction for the payment of their debts." Passed June twelfth in the year one thousand eight hundred and thirteen. An act regulating the sale of indian and rye meal. Passed June sixteenth in the year one thousand eight hundred and thirteen. An act more effectually to secure the rights of suffrage. Passed June sixteenth in the year one thousand eight hundred and thirteen. An act declaring the true intent and meaning of an act, entitled, "An act to provide for the safe keeping all prisoners committed under the authority of the United States in the several gaols within this Commonwealth." Passed February seventh in the year one thousand eight hundred and fourteen. An act in further addition to an act, entitled, "An act defining the general power and duty of turnpike corporations." Passed February twenty fourth in the year one thousand eight hundred and



fourteen. An act in addition to an act, entitled, "An act exempting certain goods and chattels of debtors from attachment and execution." Passed February twenty sixth in the year one thousand eight hundred and fourteen. An act concerning suits in behalf of the Commonwealth. Passed February twenty eighth in the year one thousand eight hundred and fourteen. An act in addition to an act, entitled, "An act, in addition to an act defining the general powers and duties, and regulating the office of Sheriff, and for extending the provisions thereof to Coroners." Passed February twenty eighth in the year one thousand eight hundred and fourteen. An act in addition to an act, entitled, "An act imposing a tax on the Banks within this Commonwealth." Passed February twenty eighth in the year one thousand eight hundred and fourteen. An act in addition to an act, entitled, "An act to provide for the proof of fire arms, manufactured within this Commonwealth." Passed February twenty eighth in the year one thousand eight hundred and fourteen. An act to prevent frauds in elections. Passed February twenty eighth in the year one thousand eight hundred and fourteen. An act in addition to an act to regulate the sale of goods at public vendue. Passed June fourteenth in the year one thousand eight hundred and fourteen. An act in addition to the several\* acts imposing a tax on Banks. Passed June fourteenth in the year one thousand eight hundred and fourteen. An act in further addition to an act, entitled, "An act for regulating, governing and training the Militia of this Commonwealth." Passed October seventeenth in the year one thousand eight hundred and fourteen. An act to establish the pay and rations of the Militia while in actual service, and the allowance to be made to them for arms, equipments, and clothing when furnished by themselves. Passed October eighteenth in the year one thousand eight hundred and fourteen. An act in addition to the several acts authorizing the sale of real estates by executors, administrators and guardians. Passed October nineteenth in the year one thousand eight hundred and fourteen. An act to authorize the appointment of surgeons in certain cases. Passed October nineteenth in the year one thousand eight

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CH. 180. hundred and fourteen. An act in addition to an act, entitled, “An act for regulating, governing and training the Militia of this Commonwealth.” Passed February eighteenth in the year one thousand eight hundred and fifteen. An act to protect minors, and to secure the rights of parents, guardians and masters. Passed February twenty seventh in the year one thousand eight hundred and fifteen. An act in addition to the several acts, regulating the building and repairing of school houses. Passed February twenty eighth in the year one thousand eight hundred and fifteen. An act to regulate the custody of shipwrecked goods, and to preserve them for their owners. Passed March second in the year one thousand eight hundred and fifteen. An act in further addition to an act, entitled, “An act for the support and regulation of mills.” Passed March second in the year one thousand eight hundred and fifteen. An act to protect the sepulchres of the dead. Passed March second in the year one thousand eight hundred and fifteen. An act in addition to the several acts defining the general powers and duties of turnpike corporations. Passed March second in the year one thousand eight hundred and fifteen. An act authorizing the establishment of law libraries. Passed March second in the year one thousand eight hundred and fifteen. An act providing compensation to Militia officers, in certain cases.\* Passed March second in the year one thousand eight hundred and fifteen. An act in addition to an act, entitled, “An act respecting lost goods and stray beasts.” Passed June thirteenth in the year one thousand eight hundred and fifteen. An act in addition to the several acts now in force to regulate the inspection of beef and pork to be exported. Passed June fourteenth in the year one thousand eight hundred and fifteen. An act in addition to an act, entitled, “An act respecting boats and lighters employed in transporting stones, gravel or sand within this Commonwealth.” Passed June fifteenth in the year one thousand eight hundred and fifteen. An act in addition to an act, entitled, “An act to regulate the sale of goods at public vendue, and to repeal all laws heretofore made for that purpose.” Passed June fifteenth in the year one thousand eight hundred and fifteen. An act requiring

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certain public inspectors to make annual returns. Passed January twentieth in the year one thousand eight hundred and sixteen. An act to regulate the practice of law in certain cases. Passed February first in the year one thousand eight hundred and sixteen. An act in further addition to an act, entitled, "An act to secure to owners their property in logs, masts, spars, and other timber in certain cases." Passed February second in the year one thousand eight hundred and sixteen. An act to regulate the quality of paper for books of public records. Passed February ninth in the year one thousand eight hundred and sixteen. An act in addition to an act, entitled, "An act for the punishment of rape and for the prevention of the same." Passed February tenth in the year one thousand eight hundred and sixteen. An act in addition to an act, entitled, "An act to regulate the weight of beef and pork." Passed February thirteenth in the year one thousand eight hundred and sixteen. An act in addition to the several acts now in force to regulate the inspection of butter and lard to be exported. Passed February fifteenth in the year one thousand eight hundred and sixteen. An act to alter the number of members composing division courts martial. Passed February fifteenth in the year one thousand eight hundred and sixteen. And act in addition to the several laws now in force providing for the collection of taxes.\* Passed February fifteenth in the year one thousand eight hundred and sixteen. An act enforcing the right of this Commonwealth to loans from the Banks within the same. Passed February sixteenth in the year one thousand eight hundred and sixteen. An act relative to the timber lodged on lands adjoining the Saco river, and the waters connected with the same. Passed February sixteenth in the year one thousand eight hundred and sixteen. An act in addition to an act, entitled, "an act in addition to an act, entitled an act providing for the due observation of the Lord's day, and repealing the several laws heretofore made for that purpose." Passed February sixteenth in the year one thousand eight hundred and sixteen. An act for the suppression and punishment of cheats. Passed February sixteenth in the year one thousand eight hundred and sixteen. An act in



**CH. 180.** addition to the several acts for giving remedies in equity.  Passed February sixteenth in the year one thousand eight hundred and sixteen. An act to enforce the rendition of an account of fees of office. Passed June fifteenth in the year one thousand eight hundred and sixteen. An act extending the powers of the Justices of the Supreme Judicial Court in certain cases. Passed June nineteenth in the year one thousand eight hundred and sixteen. An act in addition to an act for regulating, governing and training the Militia of this Commonwealth. Passed June twentieth in the year one thousand eight hundred and sixteen. An act in further addition to an act, entitled, "An act for the relief of poor prisoners who are committed by execution for debt." Passed November twenty fifth in the year one thousand eight hundred and sixteen. An act to authorize the use of the vibrating steelyard. Passed December fourth in the year one thousand eight hundred and sixteen. An act to authorize the Supreme Judicial Court to grant leave to claimants upon insolvent estates to institute suits in certain cases. Passed December fourth in the year one thousand eight hundred and sixteen. An act concerning dower. Passed December eleventh in the year one thousand eight hundred and sixteen. An act concerning Banks. Passed December thirteenth in the year one thousand eight hundred and sixteen. An act in addition to the several acts concerning\* probate bonds. Passed December thirteenth in the year one thousand eight hundred and sixteen. An act authorizing Judges of Probate to make allowances to widows of persons deceased whose estates are insolvent. Passed December thirteenth in the year one thousand eight hundred and sixteen. An act in addition to an act for the due regulation of licensed houses. Passed December fourteenth in the year one thousand eight hundred and sixteen. An act to extend the powers and duties of Sheriffs, Coroners and Constables, in certain cases. Passed June thirteenth in the year one thousand eight hundred and seventeen. An act in addition to the several laws now in force respecting school districts. Passed June thirteenth in the year one thousand eight hundred and seventeen. An act in addition to the several acts concerning the curing,

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packing and exportation of smoked and pickled fish. Passed June sixteenth in the year one thousand eight hundred and seventeen. An act establishing the compensation of certain officers of the Militia. Passed June seventeenth in the year one thousand eight hundred and seventeen. An act regulating the hunting of deer. Passed January twenty seventh in the year one thousand eight hundred and eighteen. An act explanatory of an act, entitled, "an act for the orderly solemnization of marriages." Passed January twenty seventh in the year one thousand eight hundred and eighteen. An act in addition to an act, entitled, "an act in addition to the several laws now in force providing for the collection of taxes." Passed February second in the year one thousand eight hundred and eighteen. An act for the due regulation of licensed houses in the town of Bath. Passed February second in the year one thousand eight hundred and eighteen. An act to repeal certain acts prohibiting the passing of Bank notes in certain cases. Passed February third in the year one thousand eight hundred and eighteen. An act in addition to the several laws now in force to secure to owners their property in logs, masts, spars and other timber. Passed February ninth in the year one thousand eight hundred and eighteen. An act for giving further remedies in equity. Passed February tenth in the year one thousand eight hundred\* and eighteen. An act establishing the compensation of witnesses. Passed February tenth in the year one thousand eight hundred and eighteen. An act concerning Constables. Passed February tenth in the year one thousand eight hundred and eighteen. An act to prevent the destruction of certain useful birds at unseasonable times of the year. Passed February twelfth in the year one thousand eight hundred and eighteen. An act in addition to an act, entitled, "an act exempting certain goods and chattels of debtors from attachment and execution." Passed February thirteenth in the year one thousand eight hundred and eighteen. An act to define the powers, duties and restrictions of Insurance Companies. Passed February sixteenth in the year one thousand eight hundred and eighteen. An act in addition to an act, entitled, "an act relative to timber lodged on lands

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**Сн. 180.** adjoining the Saco river, and the waters connected with the same." Passed February nineteenth in the year one thousand eight hundred and eighteen. An act regulating the sale of salt and grain. Passed February nineteenth in the year one thousand eight hundred and eighteen. An act in explanation of an act entitled, an act for the orderly solemnization of marriages. Passed February twelfth in the year one thousand eight hundred and eighteen. An act for facilitating trials in civil causes. Passed February twentieth in the year one thousand eight hundred and eighteen. An act in further addition to an act entitled, "an act empowering towns to restrain cattle from running at large within their several limits." Passed February twentieth in the year one thousand eight hundred and eighteen. An act to encourage the destruction of bears, wolves and other mischievous animals. Passed February twentieth in the year one thousand eight hundred and eighteen. An act further to provide for the payment of costs in criminal prosecutions. Passed February twentieth in the year one thousand eight hundred and eighteen. An act in addition to an act regulating bail in civil actions. Passed February twentieth in the year one thousand eight hundred and eighteen. An act in addition to an act, entitled, "an act to enable creditors to receive their just demands out of the\* goods, effects and credits of their debtors, when the same cannot be attached by the ordinary process of law. Passed February twentieth in the year one thousand eight hundred and eighteen. An act for the better regulating of prisons. Passed February twentieth in the year one thousand eight hundred and eighteen. An act regulating the packing and selling of paper within this Commonwealth, and for repealing an act heretofore made on that subject. Passed February twenty third in the year one thousand eight hundred and eighteen. An act to prevent the destruction of white pine and other forest trees, in this Commonwealth. Passed February twenty third in the year one thousand eight hundred and eighteen. An act in addition to an act, entitled, "an act prescribing the mode of taking depositions and administering oaths and affirmations." Passed February twenty fourth in the year one thousand eight hundred and eighteen.

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An act directing the mode of selling real estate lying within this Commonwealth, belonging to persons living without the same. Passed February twenty fourth in the year one thousand eight hundred and eighteen. An act in addition to an act entitled, "an act defining the general powers and duties of manufacturing corporations." Passed February twenty fourth in the year one thousand eight hundred and eighteen. An act concerning poor prisoners and other persons. Passed February twenty fourth in the year one thousand eight hundred and eighteen. An act concerning plates for printing Bank notes. Passed February twenty fourth in the year one thousand eight hundred and eighteen. An act authorizing the proprietors of churches, meeting houses, and other houses of public worship, to regulate and manage their property and interests therein. Passed February twenty fourth in the year one thousand eight hundred and eighteen. An act to regulate the jurisdiction and proceedings of the Courts of Probate. Passed February twenty fourth in the year one thousand eight hundred and eighteen. An act regulating the management and drawing of lotteries in certain cases within this Commonwealth. Passed February twenty fourth in the year one thousand eight hundred and eighteen. An act in addition to an act, entitled,\* "An act for the more effectually preventing of trespasses in divers cases." Passed June twelfth in the year one thousand eight hundred and eighteen. An act directing the Judge of Probate within and for the county of York to hold Probate Courts in the town of Limerick. Passed June twelfth in the year one thousand eight hundred and eighteen. An act in further addition to an act, entitled, "an act concerning general and common fields." Passed June twelfth in the year one thousand eight hundred and eighteen. An act to prevent the destruction of pickerel in the ponds and streams within this Commonwealth. Passed February third in the year one thousand eight hundred and nineteen. An act to amend an act entitled, "an act concerning plates for printing Bank notes." Passed February eighth in the year one thousand eight hundred and nineteen. An act in addition to an act, entitled, "an act empowering the Judges of Probate to appoint guardians to minors and oth-

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ers." Passed February eleventh in the year one thousand eight hundred and nineteen. An act in addition to an act, entitled, "an act for the due regulation of licensed houses." Passed February twelfth in the year one thousand eight hundred and nineteen. An act explanatory of an act, entitled, "an act in addition to the several laws now in force, to secure to owners their property in logs, masts, spars, and other timber." Passed February seventeenth in the year one thousand eight hundred and nineteen. An act to prevent the waste and destruction of timber and cord wood. Passed February eighteenth in the year one thousand eight hundred and nineteen. An act in further addition to an act giving remedies in equity. Passed February eighteenth in the year one thousand eight hundred and nineteen. An act in addition to an act, entitled, "an act against forgery and counterfeiting." Passed February nineteenth in the year one thousand eight hundred and nineteen. An act in addition to the acts concerning the sale of real estate, by administrators, executors and guardians. Passed February nineteenth in the year one thousand eight hundred and nineteen. An act for the encouragement of agriculture and manufactures. Passed February twentieth in\* the year one thousand eight hundred and nineteen. An act in addition to the several acts now in force directing the manner of levying executions [on] real estate. Passed February twentieth in the year one thousand eight hundred and nineteen. An act in addition to the several acts now in force respecting highways. Passed February twentieth in the year one thousand eight hundred and nineteen. An act to encourage trade and navigation within this Commonwealth. Passed February twentieth in the year one thousand eight hundred and nineteen. An act making further provision for the punishment of robbery, manslaughter, and felonious assaults. Passed February nineteenth in the year one thousand eight hundred and nineteen. An act respecting packed pickled fish. Passed June seventeenth in the year one thousand eight hundred and nineteen. An act in addition to an act, entitled, "an act for the providing and regulating of prisons." Passed June eighteenth in the year one thousand eight hundred and nineteen. An act in further-



ance of good discipline in the colleges of this Commonwealth. Passed June nineteenth in the year one thousand eight hundred and nineteen. An act regulating damages on inland bills of exchange. Passed June nineteenth in the year one thousand eight hundred and nineteen. An act in addition to the acts relative to highways. Passed June nineteenth in the year one thousand eight hundred and nineteen. An act in addition to an act, entitled, "an act to prevent the destruction of pickerel in the ponds and streams within this Commonwealth." Passed June nineteenth in the year one thousand eight hundred and nineteen. An act in addition to an act, entitled, "an act directing the mode of attaching on mesne process and selling by execution, shares [of] debtors in incorporated companies." Passed February first in the year one thousand eight hundred and twenty. An act laying a tax upon retailers of spirituous liquors and other persons. Passed February twenty first in the year one thousand eight hundred and twenty. An act securing to mechanics and others payment for their labor, and materials expended in erecting and repairing houses and other buildings with their appurtenances. Passed February twenty\* first in the year one thousand eight hundred and twenty. An act in addition to an act, entitled, "an act directing the settlement of the estates of persons deceased, and for the conveyance of real estate in certain cases. Passed February twenty fourth in the year one thousand eight hundred and twenty. An act regulating the time for inspecting military stores, parading the troops, and fixing the compensation of certain Staff officers. Passed February twenty fourth in the year one thousand eight hundred and twenty. An act in addition to an act, entitled, "an act relating to the punishment of convicts who may be sentenced to solitary imprisonment and confinement to hard labour." Passed February twenty fifth in the year one thousand eight hundred and twenty. An act providing for the support of State paupers. Passed February twenty fifth in the year one thousand eight hundred and twenty.

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SECT. 2. *Be it further enacted*, That all other acts and parts of acts passed by the Legislature of the Commonwealth of Massachusetts, and adopted by the Constitution of this



CH. 180. State, the titles whereof are not particularly set forth in the first section of this act be, and the same are as respects this State hereby repealed, so far as the same come within the purview of, or are inconsistent with any of the acts passed by this Legislature at the present session thereof. *Provided*, That all the acts aforesaid shall be and remain in force so far as respects the trial and punishment of all offenders therein mentioned, which have been committed before the passing of this act, or before the virtual repeal of all or any of the acts aforesaid, by the passing of other acts relating to the same subject matter by this Legislature, and saving also to all persons, all rights of action in virtue of any of the acts hereby repealed : and all actions and causes of actions commenced in virtue of or founded on said acts, or any of them, in the same manner as though this act or any acts revising and virtually repealing said former acts had never been passed. And whereas many of the acts hereby repealed contain sections or clauses repealing former acts, or parts thereof which ought not to be again in force and operation.

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This repealing act not to revive any former laws, &c.

SECT. 3.\* *Be it therefore further enacted*, That this act shall not be construed to [revive] or give any legal effect to any of the acts or parts of acts repealed, in the manner above mentioned by any of the acts hereby repealed. [Approved March 21, 1821.]



# APPENDIX.

AN\* ACT relating to the Separation of the District of Maine from Massachusetts Proper, and forming the same into a separate and independent State. [\*817]

WHEREAS it has been represented to this Legislature, that a majority of the people of the District of Maine are desirous of establishing a separate and independent Government within said District; Therefore, Preamble.

SECT. 1. **BE** it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the consent of this Commonwealth be, and the same is hereby given, that the District of Maine may be formed and erected into a separate and independent State, if the people of the said District shall, in the manner, and by the majority, hereinafter mentioned, express their consent and agreement thereto, upon the following terms and conditions; and, provided, the Congress of the United States shall give its consent thereto, before the fourth day of March next: which terms and conditions are as follows, viz: Legislative consent.

*First.* All the lands and buildings belonging to the Commonwealth, within Massachusetts Proper, shall continue to belong to said Commonwealth; and all the lands belonging to the Commonwealth, within the District of Maine, shall belong, the one half thereof, to the said Commonwealth, and the other half thereof, to the State to be formed within the said District, to be divided as is hereinafter mentioned; and the lands within the said District, which shall belong to the said Commonwealth, shall be free from taxation, while the title to the said lands remains in the Commonwealth; and the rights\* of the Commonwealth to their land, within said District, and the remedies for the recovery thereof, shall continue the same within the proposed State, and in the Courts thereof, as they now are within the said Commonwealth, and Division of property. [\*818]



in the Courts thereof ; for which purposes, and for the maintenance of its rights, and recovery of its lands, the said Commonwealth shall be entitled to all other proper and legal remedies, and may appear in the Courts of the proposed State, and in the Courts of the United States, holden therein, and prosecute as a party, under the name and style of the Commonwealth of Massachusetts ; and all rights of action for, or entry into lands, and of actions upon bonds, for the breach of the performance of the condition of settling duties, so called, which have accrued, or may accrue, shall remain in this Commonwealth, to be enforced, commuted, released, or otherwise disposed of, in such manner as this Commonwealth may hereafter determine : *Provided however*, That whatever

**Proviso.**

*Second.* All the arms which have been received by this Commonwealth from the United States, under the law of Congress, entitled, “an act making provision for arming and equipping the whole body of Militia of the United States,” Passed April the twenty third, one thousand eight hundred and eight, shall, as soon as the said District shall become a separate State, be divided between the two States, in proportion to the returns of the Militia, according to which, the said arms have been received from the United States, as aforesaid.

**Division of  
arms.**

*Third.* All monies, stock, or other proceeds, hereafter obtained from the United States, on account of the claim of this Commonwealth, for disbursements made, and expenses incurred, for the defence of the State, during the late war with Great Britain, shall be received by this Commonwealth, and when received shall be divided between the two States, in the proportion of two thirds to this Commonwealth, and one third to the new State.

**Division of  
Massachusetts  
claims.**

**[\*819]**

*Fourth.\** All other property of every description, belonging to the Commonwealth, shall be holden and receivable by the same, as a fund and security, for all debts, annuities, and



Indian subsidies, or claims due by said Commonwealth ; and within two years after the said District shall have become a separate State, the Commissioners to be appointed, as hereinafter provided, if the said States cannot otherwise agree, shall assign a just portion of the productive property so held by said Commonwealth, as an equivalent and indemnification to said Commonwealth, for all such debts, annuities, or Indian subsidies or claims, which may then remain due or unsatisfied ; and all the surplus of the said property, so holden, as aforesaid, shall be divided between the said Commonwealth and the said District of Maine, in the proportion of two thirds to the said Commonwealth, and one third to the said District. And if, in the judgment of the said Commissioners, the whole of said property, so held, as a fund and security, shall not be sufficient indemnification, the said District shall be liable for, and shall pay to said Commonwealth, one third of the deficiency.

Commission-  
ers to settle  
claims.

*Fifth.* The new State shall, as soon as the necessary arrangements can be made for that purpose, assume and perform all the duties and obligations of this Commonwealth, towards the Indians within said District of Maine, whether the same arise from treaties or otherwise ; and for this purpose, shall obtain the assent of said Indians, and their release to this Commonwealth of claims and stipulations arising under the treaty at present existing between the said Commonwealth and said Indians ; and as an indemnification to such new State, therefor, this Commonwealth, when such arrangements shall be completed, and the said duties and obligations assumed, shall pay to said new State, the value of thirty thousand dollars, in manner following, viz : The said commissioners shall set off by metes and bounds, so much of any part of the land, within the said District, falling to this Commonwealth, in the division of the public lands, hereinafter provided for, as in their estimation shall be of the value of thirty thousand dollars ; and this Commonwealth shall, thereupon, assign the same to the said new State ; or in lieu thereof, may pay the sum of thirty thousand dollars at\* its election ; which election of the said Commonwealth, shall be made within one year from the time that notice of the doings of

Indian rights.

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the Commissioners, on this subject, shall be made known to the Governor and Council ; and if not made within that time, the election shall be with the new State.

*Sixth.* Commissioners, with the powers and for the pur-

Mode of choos-  
ing commis-  
sioners.

poses mentioned in this act, shall be appointed in manner following :—The Executive authority of each State shall appoint two ; and the four so appointed, or the major part of them, shall appoint two more ; but if they cannot agree in the appointment, the Executive of each State shall appoint one in addition ; not, however, in that case, to be a citizen of its own State. And any vacancy happening with respect to these two Commissioners, shall be supplied in the manner provided for their original appointment ; and, in addition to the powers herein before given to said Commissioners, they shall have full power and authority, and it shall be their duty, within ten years, next after the commissions shall be filled up, to divide all the public lands within the District, between the respective States, in equal shares, or moieties, in severalty, having regard to quantity, situation and quality ; they shall determine what lands shall be surveyed and divided, from time to time ; the expense of which surveys, and of the commission, shall be borne equally by the two States. They shall keep fair records of their doings, and of the surveys made by their direction ; copies of which records, authenticated by them, shall be deposited from time to time, in the archives of the respective States ; transcripts of which, properly certified, may be admitted in evidence, in all questions touching the subject to which they relate. The Executive authority of each State may revoke the power of either or both its Commissioners ; having, however, first appointed a substitute, or substitutes, and may fill any vacancy happening with respect to its own Commissioners ; four of said Commissioners shall constitute a quorum, for the transaction of business ; their decision shall be final, upon all subjects within their cognizance. In case said commission shall expire, the division not having been completed, and either State shall request the renewal or filling up of the same,\* it shall be renewed, or filled up in the same manner as is herein provided for filling the same, in the first instance, and with the

Division of  
lands.

Vacancies to  
be filled up.



like powers ; and if either State shall, after six months notice neglect or refuse to appoint its Commissioners, either for filling the commission in the first instance, or the renewal thereof, the other may fill up the whole commission.

*Seventh.* All grants of lands, franchises, immunities, corporate or other rights, and all contracts for, or grants of land not yet located, which have been or may be made by the said Commonwealth, before the separation of said District shall take place, and having or to have effect within the said District, shall continue in full force, after the said District shall become a separate State. But the grant which has been made to the President and Trustees of Bowdoin College, out of the tax laid upon the banks, within this Commonwealth shall be charged upon the tax upon the banks within the said District of Maine, and paid according to the terms of said grant ; and the President and Trustees, and the Overseers of said College, shall have, hold and enjoy their powers and privileges in all respects ; so that the same shall not be subject to be altered, limited, annulled or restrained, except by judicial process, according to the principles of law ; and in all grants hereafter to be made, by either State, of unlocated land within the said District, the same reservations shall be made for the benefit of Schools, and of the Ministry, as have heretofore been usual, in grants made by this Commonwealth. And all lands heretofore granted by this Commonwealth, to any religious, literary, or eleemosynary corporation, or society, shall be free from taxation, while the same continues to be owned by such corporation, or society.

Former grants  
to be held  
good.

*Eighth.* No laws shall be passed in the proposed State, with regard to taxes, actions, or remedies at law, or bars, or limitations thereof, or otherwise making any distinction between the lands and rights of property of proprietors, not resident in, or not citizens of said proposed State, and the lands and rights of property of the citizens of the proposed State, resident therein ; and the rights and liabilities of all persons, shall after the said separation, continue the same as if the said District\* was still a part of this Commonwealth, in all suits pending, or judgments remaining unsatisfied, on the fifteenth of March next, where the suits have been commen-

Suits to be con-  
tinued and re-  
covered.

[\*822]



ced in Massachusetts Proper, and process has been served within the District of Maine ; or commenced in the District of Maine, and process has been served in Massachusetts Proper, either by taking bail, making attachments, arresting and detaining persons, or otherwise, where execution remains to be done ; and in such suits, the Courts within Massachusetts Proper and within the proposed State, shall continue to have the same jurisdiction as if the said District still remained a part of the Commonwealth. And this Commonwealth shall have the same remedies, within the proposed State, as it now has, for the collection of all taxes, bonds, or debts, which may be assessed, due, made, or contracted, by, to, or with the Commonwealth, on or before the said fifteenth day of March, within the said District of Maine ; and all officers within Massachusetts Proper and the District of Maine, shall conduct themselves accordingly.

Constitutional principle.

*Ninth.* These terms and conditions, as here set forth, when the said District shall become a separate and independent State, shall, *ipso facto*, be incorporated into, and become, and be a part of any constitution, provisional, or other, under which the government of the said proposed State shall, at any time hereafter, be administered ; subject, however, to be modified, or annulled, by the agreement of the Legislature of both the said States ; but by no other power or body whatsoever.

Time of meeting, and qualification of voters.

SECT. 2. *Be it further enacted,* That the inhabitants of the several towns, districts, and plantations, in the District of Maine, qualified to vote for Governor or Senators, shall assemble in regular meeting, to be notified by warrants of the proper officers, on the fourth Monday of July next, and shall, in open meeting, give in their votes, on this question : “Is it expedient, that the District of Maine shall become a separate and independent State, upon the terms and conditions, provided in an act, entitled, ‘an act relating to the separation of the District of Maine from Massachusetts Proper, and forming the same into a separate and independent State ?’ ” And the Selectmen of the towns and districts, and the\* Assessors of the plantations, shall, in open meeting, receive, sort, count and declare, and the Clerks thereof, respectively, shall record the votes given for and against the



measure ; and the said Selectmen, Assessors, and Clerks, respectively, shall make out an exact return thereof, under their hands, and shall seal up and transmit the same to the office of the Secretary of this Commonwealth, on or before the fourth Monday of August next. And all returns, not then made, shall be rejected in the counting ; and the Governor and Council shall open and examine the said returns, made as aforesaid, and shall count the votes given on the said question : And the Governor shall, by public proclamation, to be made as soon as the state of the votes can be ascertained, after the said fourth Monday of August next, make known the result, by declaring the number of votes appearing in favor of the separation of said District, as aforesaid, and the number of votes appearing against it. And, if the number of votes for the measure shall exceed the number of votes against it by fifteen hundred, then, and not otherwise, the people of said District shall be deemed to have expressed their consent and agreement, that the said District shall become a separate and independent State, upon the terms and conditions above stated ; and in case of such majority, the Governor, in his said proclamation, shall call upon the people of said District to choose delegates to meet in Convention for the purposes, and, in the manner hereinafter provided ; and in addition to publishing said proclamation, in one or more of the public newspapers printed in Boston, and in the District of Maine, copies of the same, duly authenticated, shall, as soon as can conveniently be done, after the making of the same, be transmitted to the office of the Clerks of the Courts of Common Pleas, in the several counties of the District of Maine, for public examination ; and one such copy at least, shall be transmitted to the Convention of delegates, hereinafter mentioned, when said Convention shall be formed.

Meeting of  
convention.

SECT. 3. *Be it further enacted,* That if it shall be declared by said proclamation, that the said majority of fifteen hundred votes appeared by the said returns to be in favor of the separation of the said District as aforesaid ; the inhabitants of the several towns and districts, now entitled to send one or more\* Representatives to the General Court, and all other incorporated towns, shall, on the third Monday of Sep-



Limitation of  
delegates.

tember next, assemble in town meeting, to be notified by warrant of the Selectmen, and shall elect one or more delegates (not exceeding the number of Representatives which such town is now entitled to ; each town, however, to be at liberty to elect at least one,) to meet delegates from other towns within the said District, in Convention, for the purpose of forming a Constitution, or frame of Government, for the said District. And at such meeting of the said inhabitants, every person qualified to vote for Senators, shall have a right to vote in the choice of delegates. And the Selectmen shall

Declaration of  
votes.

preside, at such meeting, and shall in open meeting, receive, sort, count and declare the votes, and the Clerk shall make a record thereof, in presence of the Selectmen, and in open meeting. And fair copies of the said record shall be attested by the Selectmen and town Clerk, and one such copy shall be delivered by the Selectmen to each of the persons duly elected a delegate.

Application to  
Congress.

SECT. 4. *Be it further enacted*, That the persons so elected delegates, shall meet in Convention, at the Court House, in Portland, in the county of Cumberland, on the second Monday of October next, and they shall be the judges of the returns and elections of their own members, and may adjourn from time to time, and sixty of the persons elected shall constitute a quorum for the transaction of business ; and the said delegates shall, as soon as may be, proceed to organize themselves, in Convention, by choosing a President, and such other officers as they may judge expedient, and establishing proper rules of proceedings ; and it shall be the duty of the said Convention, to apply to the Congress of the United States, for its assent to be given, before the last day of January next, that the said District shall be admitted into the Union, as a separate and independent State. And it shall

Constitution to  
be formed.

also be the duty of the said Convention, to form a Constitution, or frame of government, for said new State, and to determine the style and title of the same ; and such Constitution, when adopted, and ratified by the people of said District, in the manner hereinafter mentioned, shall, from and after the fifteenth day of March, in the year of our Lord, one\* thousand eight hundred and twenty, (the consent of the Congress of the United States, then being first had as afore-



said,) be the Constitution of said new State. And the said Convention shall, as soon as may be, after having formed such Constitution, or frame of government for such new State, cause the same to be published, and sent to the several towns, districts and plantations, within the said District of Maine ; and there shall be a meeting of the inhabitants, in each of said towns, districts, and plantations, to be called and warned by the Selectmen, and Assessors respectively, in due course of law ; and on the day named by said Convention, at which meeting, every male inhabitant, having the personal qualifications, herein declared requisite in the election of delegates to said Convention, shall have a right to vote ; and the people so assembled, shall give in their votes in writing, expressing their approbation or disapprobation of the Constitution so prepared, and proposed by said Convention. And the Selectmen of the several towns, and the Assessors of the several districts, and plantations respectively, shall preside at such meetings, and shall receive the votes of all the inhabitants duly qualified as aforesaid, and shall sort and count them in open meeting of the town, district, or plantation ; and the same, shall be then and there recorded in the books of the town, district or plantation ; and a fair copy of such record shall be attested by the Selectmen or Assessors, and the Clerk of the town, district, or plantation respectively, and shall be, by the said Selectmen or Assessors, transmitted and delivered to the said Convention, or to the President thereof, for the time being, or to any committee appointed to receive the same, on or before the first day of January next ; on which day, or within ten days thereafter, the said Convention shall be in session, and shall receive and count all the votes returned, and declare and publish the result ; and if a majority of the votes so returned shall be in favor of the Constitution proposed, as aforesaid, the said Constitution shall go into operation, according to its own provisions ; otherwise the Constitution of Massachusetts, with the addition of the terms and conditions herein provided, shall be, and be considered as the Constitution of the said proposed State, in manner as hereinafter\* provided. And to the end, that no period of anarchy may happen to the people of said proposed State, in case a new

Constitution to  
be approved by  
the people.

Return of votes  
to the conven-  
tion.



General rever.  
vations.

Constitution shall not be adopted and ratified by the people of said District of Maine, the present Constitution of the Commonwealth of Massachusetts, shall, with the terms and conditions aforesaid, and with the exception hereinafter made, be provisionally, the Constitution or frame of government, for said District ; except only such parts of said Constitution of Massachusetts, as relate to the style or title of said State, or may be otherwise inconsistent with, or repugnant to the situation and condition of said new State ; and except, that the people of said district shall choose in their Senatorial districts, as now established, three times the number of Senators now allowed them, and that the Legislature shall choose such a number of Counsellors, not exceeding nine, as they shall determine to be proper. And the said Convention shall designate the place for the first meeting of the Legislature of said new State, and for the organization of its government, and shall appoint a Secretary, pro tempore, for said new State ; and the said Convention shall regulate the pay of its members ; and the person, authorized by said Convention, may draw upon the Treasury of the Commonwealth for the amount of the pay roll, not, however, to exceed the amount of the money paid into the Treasury by the several Banks within said District, for the tax upon the same, due and payable on the first Monday of October next ; and the sum or sums so drawn for, and paid out of the Treasury, shall be a charge upon the new State in the division of the property, provided for in the fourth article of the terms and conditions stated in the first section of this act.

Preliminary  
powers.

SECT 5. *Be it further enacted,* That until a Governor of the proposed State shall be chosen and qualified according to the Constitution which may be in operation in said State, the person last chosen President of the said Convention, shall, from and after the fifteenth day of March next, have all the power of the Governor and Council under the Constitution of Massachusetts, until a new Governor shall be chosen and qualified in the said proposed State ; excepting only, that the said President shall not have the power to remove from office\* any officer who may be duly qualified, and executing the duties of his office according to the intent and meaning of this act.



And in order that there may be no failure of justice, and that no danger may arise to the people of the said District of Maine, after the fifteenth day of March next, and before the government of the said State shall be fully organized ; therefore,

SECT. 6. *Be it further enacted*, That all the laws which shall be in force within said District of Maine, upon the said fifteenth day of March next, shall still remain, and be in force, within the said proposed State, until altered or repealed by the government thereof, such parts only excepted as may be inconsistent with the situation and condition of said new State, or repugnant to the Constitution thereof. And all officers, who shall, on the said fifteenth day of March next, hold commissions, or exercise any authority within the said District of Maine, under the Commonwealth of Massachusetts, or by virtue of the laws thereof, excepting only, the Governor, Lieutenant Governor and Council, the members of the Legislature, and the Justices of the Supreme Judicial Court of the said Commonwealth of Massachusetts, shall continue to have, hold, use, exercise and enjoy, all the powers and authority to them respectively granted or committed, until other persons shall be appointed in their stead, or until their respective offices shall be annulled by the government of said proposed State. And all Courts of law, whatsoever, within the said proposed State, excepting only the Supreme Judicial Court, shall proceed to hear and determine all causes, matters and things, which are or may be commenced or depending before them, respectively, upon the said fifteenth day of March next, or at any time afterwards, and before the government of the said proposed State shall establish new Courts within the same ; and shall continue from and after the said fifteenth day of March next, to exercise the like power and authority, and in like manner as they now by law may do, until such new Courts shall be so established, in their stead.

Perpetuity of laws.

Duration of office, civil and judicial.

SECT. 7. *Be it further enacted*, That all actions, suits, and causes, civil and criminal, and all matters and things whatsoever,\* that shall, on the said fifteenth day of March next, be in any manner depending in the Supreme Judicial Court

Continuance of actions.

[\*828]



Probate and  
other appeals.

of the said Commonwealth of Massachusetts, then last holden within any county in the District of Maine, and all writs, recognisances, and other processes whatsoever, that may be then returnable to the said Supreme Judicial Court, shall be respectively transferred, and returned to, have day in, and be heard, tried, and determined in the highest Court of law that shall be established in the said new State, by the government thereof; and at the first term of such Court, that shall be held within the county in which such action, writ, process, or other matter or thing, may be so pending or returnable. And in all cases of appeals from any Circuit Court of Common Pleas, or Probate, or other Court, which shall be made after the said fifteenth day of March next, in any action, cause, or suit whatsoever, and which would by law be made to the said Supreme Judicial Court thereof, it shall be sufficient for the appellant to claim an appeal, without naming or designating the Court appealed to; and such appeal shall be entered at the Supreme or Superior Judicial Court, or highest Court of Law, to be established by the government of the said new State, which shall first thereafter be held within or for the county in which such action, cause, or suit may be pending, and shall there be heard, tried, and determined, according to law.

General provisions.

*Provided, however,* That nothing contained in this section shall be understood or construed to control, in any degree, the right of the people of the said new State, or the government thereof, to establish Judicial Courts, in such manner, and with such authority as they shall see fit; nor to prevent the said people or their government from making any other provisions, pursuant to their Constitution, and not repugnant to the terms and conditions above set forth, respecting all the said actions, suits, processes, matters and things, herein above mentioned, as they shall think most proper, to prevent the discontinuance thereof, and to avoid any delay or failure of justice. [Approved by the Governor, June 19, 1819.]



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## APPENDIX.

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| <b>ACT OF SEPARATION</b> | <b>*938</b> |
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## VERBAL ERRORS IN THE ORIGINALS, CORRECTED.

Page 547, Sect. 1, line 1, *therefore* is omitted before 'enacted,' &c. ; Page 553, Sect. 5, line 3, 'that' is substituted for *the* before 'purpose' &c. ; Page 577, line 3, *the* is omitted before 'collecting' &c. ; Page 595, Sect. 61, line 14, 'the' is inserted before 'said' &c. ; Page 637, Sect. 6, line 2, 'are hereby' is substituted for *hereby are* before 'empowered' &c. ; Page 637, Sect. 6, line 12, 'years' is inserted before 'or' &c. ; Page, 638, Sect. 7, line 26, 'to' is inserted before 'him' &c. ; Page 650, Sect. 18, line 20, *if* is omitted before 'he may' &c. ; Page 669, line 6, 'the' is inserted before 'said' &c. ; Page 676, Sect. 4, line 2, *And* is omitted before 'more' &c. Page 684, Sect. 2, line 1, *And* is omitted before 'Be' &c. ; Page 684, Sect. 3, line 1, *And* is omitted before 'Be' &c. ; Page 685, Sect. 4, line 1, *And* is omitted before 'Be' &c. ; Page 685, Sect. 6, line 1, *And* is omitted before 'Be' &c. ; Page 686, Sect. 7, line 1, *And* is omitted before 'Be' &c. ; Page 690, Sect. 8, line 1, *And* is omitted before 'Be' &c. ; Page 690, Sect. 9, line 1, *And* is omitted before 'Be' &c. ; Page 691, Sect. 10, line 1, *And* is omitted before 'Be' &c. ; Page, 691, Sect. 12, line 1, *And* is omitted before 'Be' &c. ; Page 702, Sect. 2, line 1, *And* is omitted before 'Be' &c. ; Page 703, Sect. 3, line 1, *And* is omitted before 'Be' &c. ; Page 717, Sect. 5, line 6, *any* is omitted before 'such' &c. ; Page 718, Sect. 6, line 11, 'an' is inserted before 'action' &c. ; Page 735, Sect. 4, line 1, *And* is omitted before 'Be' &c. ; Page 754, Sect. 2, line 9, 'a' is substituted for *an* before 'hollow' &c. ; Page 754, Sect. 3, line 5, 'an' is inserted before 'half' &c. ; Page 761, Sect. 7, line 6, 'of' is substituted for *if* ; Page 801, Sect. 3, line 7, 'these' is substituted for *those* ; Page 816, Sect. 5, line 1, *And* is omitted before 'Be' &c. ; Page 822, line 15, 'be' is inserted before 'alienated' ; Page 832, line 7, 'the' is inserted before 'parade' ; Page 834, line 22, 'book' is substituted for *books* before 'shall' &c. ; Page 837, Sect. 31, line 6, 'Division' is substituted for *Divisions* ; Page 848, Art. 30, line 9, *a* is omitted before 'sufficient' ; Page 848, Art. 30, line 10, *an* is omitted before 'iron' &c. ; Page 848, Art. 30, line 12, 'in' is substituted for *of* ; Page 865, Sect. 1, line 33, 'an' is substituted for *any* ; Page 865, Sect. 2, line 1, *And* is omitted before 'Be' &c. ; Page 866, Sect. 3, line 1, *And* is omitted before 'Be' &c. ; Page 867, Sect. 4, line 1, *And* is omitted before 'Be' &c. ; Page 896, line 18, *the* is omitted before 'seventeenth' ; Page 926, line 9, 'an' is substituted for *the* ; Page 928, line 11, 'an' is substituted for *the* ; Page 929, line 23, 'an' is substituted for *the* ; Page 932, Sect. 3, line 2, 'revive' is substituted for *receive*.

## VERBAL ERRORS TO BE CORRECTED.

Page 550, line 13, insert *the* before 'powers' ; Page 559, Sect. 11, line 2, for 'Selectmen or Assessors' read *Selectman or Assessor* ; Page 563, Sect. 14, line 14, for 'Assessors' read *Assessors* ; Page 568, Sect. 12, line 14, for 'permitted' read *admitted* ; Page 578, line 6, insert *the* before 'Assessors' ; Page 584, line 25, for 'collection' read *collections* ; Page 585, Sect. 42, line 6, for 'plantation' read *plantations* ; Page 589, Sect. 47, line 26, for 'where' read *whereto* ; Page 590, line 27, insert *the* before 'form' ; Page 608, Sect. 6, line 7, insert *and* before 'under' ; Page 619, Sect. 20, line 3, for 'or' read *on* ; Page 620, Sect. 23, line 14 for 'proportion' read *proportions* ; Page 636, line 31, for 'may' read *shall* ; Page 639, line 6, for 'name' read *names* ; Page 644, Sect. 15, line 7, for 'expense' read *expenses* ; Page 644, in the form for summons, line 4, insert at ——— *in said county of* ——— ; Page 645, line 18, insert *do* before 'adjudge' ; Page 646, line 3, for 'and' read *or* ; Page 649, line 18, omit 'an' before action ; Page 655, line 4, for 'this' read *thus* ; Page 655, Sect. 2, line 7, for 'this' read *thus* ; Page 656, Sect. 5, line 4, insert *the* before 'charge' ; Page 657, line 7, for 'by' read *of* ; Page 658, Sect. 10, line 10, for 'costs' read *cost* ; Page 660, Sect. 1, line 3, for 'and' read *or* ; Page 661, Sect. 4, line 13, omit *the* before 'duties' ; Page 665, Sect. 3, line 2, for 'in' read *of* ; Page 683, line 10, omit *the* before 'cattle' ; Page 693, Sect. 3, line 2, for 'an' read *any* ; Page 694, line 2, insert *said* before 'Selectmen' ; Page 707, Sect. 6, line 13, insert *as* before 'aforesaid' ; Page 720, Sect. 11, line 5, for 'Treasury' read *Treasurer* ; Page 723, Sect. 16, line 15, omit *the* before 'said meeting' ; Page 726, Sect. 2, line 5, insert *the* before 'said' ; Page 728, Sect. 4, line 4, for 'said' read *such* ; Page 728, Sect. 4, line 5, for 'estate' read *estates* ; Page 750, Sect. 17, line 2, omit *an* before 'action' ; Page 750, Sect. 17, line 6, for 'and' read *or* ; Page 753, Sect. 1, line 13, for 'and' read *or* ; Page 768, line 3, for 'and' read *or* ; Page 775, Sect. 1, line 16, for 'casks' read *cask* ; Page 781, Sect. 7, line 9, insert *of* before 'any' ; Page 784, chap. 8, line 3, for 'ship' read *shift* ; Page 785, chap. 10, line 15, for 'said' read *such* ; Page 786, Sect. 1, line 10, omit *make* before 'mark' &c. ; Page 788, Sect. 6, line 5, omit *the* before 'pain' ; Page 873, Sect. 6, line 4, for 'term' read *terms* ; Page 876 Sect. 4, line 11, insert *a* before 'Jury' ; Page 880, line 5, insert *an* before 'action' ; Page 885, Sect. 2, line 2, omit *as* before 'those' ; Page 900, line 37, omit 'of our Lord' ; Page 900, line 38, for 'and' read *an* ; Page 925, line 23, for 'and' read *an* ; Page 925, line 29, omit *the* before 'timber.'



**STATE OF MAINE.**

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**SECRETARY OF STATE'S OFFICE, }  
AUGUSTA, January 9, 1834. }**

**I HEREBY CERTIFY, That the Laws constituting the preceding Volume, have been compared with the ORIGINAL MANUSCRIPTS deposited in this office ; and, with the exception of the words contained in the preceding paragraphs, entitled "*Verbal errors in the originals, corrected*"; and "*Verbal errors to be corrected*"; that they appear to have been correctly printed.**

**R. G. GREENE,  
Secretary of State.**